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A HANDY-BOOK

ON THE

LAW OF THE DRAMA AND MUSIC.

A

HANDY-BOOK

ON THE

LAW OF THE DRAMA AND MUSIC:

BEING

AN EXPOSITION

OF

THE LAW OF DRAMATIC COPYRIGHT,
COPYRIGHT IN MUSICAL COMPOSITIONS,
DRAMATIC COPYRIGHT IN MUSIC,
AND INTERNATIONAL
COPYRIGHT IN THE DRAMA AND MUSIC;
THE LAW FOR REGULATING THEATRES;
THE LAW AFFECTING THEATRES;

AND

THE LAW RELATING TO MUSIC, DANCING,
AND PROFESSIONAL ENGAGEMENTS;

WITH

The Statutes, Forms, &c., referring thereto.

Let us go in,
And charge us there upon enter'gatories,
And we will answer all things faithfully.
Merchant of Venice.

LONDON: T. H. LACY, 89, STRAND.
1864.

PRICE TWO SHILLINGS.

PREFACE.

THE publication of a pocket volume, having for its object the bringing together of the whole law relative to dramatic and musical entertainments, for the purpose of affording ready and trustworthy information to all persons concerned and interested in the theatrical and musical professions, has been thought by many to be of considerable importance. A desire to supply this want, coupled with an intimate knowledge of the law on the subject, has induced the author to lay before the profession and the public the following *resumé* of the leading points bearing upon its operation, selected and arranged with the greatest possible care, together with the statutes, forms, &c. The author hopes that the condensation into one small volume of so much important matter, will not only meet with the approbation of the profession generally, but form a practically useful and convenient book of reference on the various branches of the law with which it treats.

April, 1864.

CONTENTS.

COPYRIGHT IN THE DRAMA.

Previous to the passing, in 1833, of the Dramatic Literary Property Act, 3 and 4 William IV. c. 15, copyright in dramatic works was unprotected, save what common law right existed in an unpublished manuscript, which, as personal property, did not carry with it an exclusive right of representation. Publication, under the early Acts, had reference only to the printing or otherwise multiplying copies of any work. Representation then, on the stage, was not a *publication* within the meaning of the statute; and consequently an action could not be maintained for acting a play without the consent of the author. Sheridan's opera of the "Duenna" (*The Proprietors of Covent Garden Theatre* v. *Vandermere and others*), O'Keefe's farce of "The Agreeable Surprise" (*Coleman* v. *Wathen*), and Lord Byron's tragedy of "Marino Faliero, Doge of Venice" (*Murray* v. *Elliston*), were all represented on the stage without the permission of the proprietors; and in each case the law was declared to be, that there was no infringement of copyright in the mere representation of a play. Under this unsatisfactory state of the law, a dramatic author had no protection afforded him besides what might be obtained from the Court of Equity by injunction to restrain—a course which gave no pecuniary relief to the author or proprietor for injury already sustained, whatever might have been the extent; and even this remedy was limited to pieces already printed and published: *Morris* v *Kelly*.

The Act of 3 and 4 William IV. c. 15 (see Appendix A.), commonly called Sir Edward Bulwer Lytton's Act, was passed on the 10th June, 1833. After reciting the 54 George III., c. 156, sect. 1 provides that the author or his assigns shall have the sole liberty of representing any dramatic piece published within ten years before the date of the Act; for the period of twenty-eight years from the time of publication; or for the remainder of the author's life, should he live longer, without prejudice to the right of any person to represent a play to which the author or his assignee had, previously to the passing of the Act, given his consent. This term is extended by the 5 and 6 Vict. c. 45, s. 20 (see Appendix B.), to the same as copyright in books, namely, forty-two years. The section gives similar protection to authors of musical pieces and their assigns.

The penalty for representing, or causing to be represented, any play without the consent of the author or proprietor in writing, is, by sect. 2 of the Act of William IV., forty shillings for every representation, or the full amount of the benefit derived from the performance, or the loss or injury sustained by the plaintiff, which-

ever may be the greater, together with double costs of suit. The latter proviso is repealed in all cases, by 5 and 6 Vict. c. 97, and in lieu thereof a full and reasonable indemnity is substituted. But these alternatives are seldom accepted, owing to the extreme difficulty in the way of the plaintiff being able to give satisfactory proof of either one or the other. Neither does the statuteable remedy find much favour among dramatists. The procedure is far too tedious to be put in motion for the remedying an evil which requires prompt adjudication, though the chance of success, in suing for damages under this Act, is greater than in the case of infringement of copyright in books under the Literary Copyright Act. The latter does not specify any amount of damages to be sued for, whereas the Dramatic Copyright Act gives not less than forty shillings for each representation; and also enables an author to sue for damages in addition to the remedies for penalties. Pending these proceedings at common law, an author might suffer severely were it not for the equitable intervention of the Court of Chancery. The remedy by injunction to restrain is therefore more often resorted to than the process prescribed by the Act, notwithstanding that one form of suit is no bar to the prosecution of the other. By injunction with a good title the remedy is expeditious and sure, highly desirable in the disposal of questions of copyright, though the Court has not the power, as in the case of literary property, to order an account of the profit derived from the infringement.

The first public representation or performance of any dramatic piece, is deemed by sect. 20 of 5 and 6 Vict. c. 45, equivalent to the first publication of a book. That Act, in extending the term of copyright in dramatic pieces, and providing for their registration and assignment, gives to proprietors all the remedies of the Act of William IV. combined, and, as regards registration, nothing in the Act prejudices these remedies, although no entry be made in the book of registry (sect. 24).

It is sufficient, in an action upon this statute, to describe the offence in the words of the Act; and it is not necessary, in order to constitute the offence, to show that the defendant knowingly invaded the plaintiff's right. The object of the legislature was clearly to protect authors against the piratical invasion of their rights, and in construing the law, the judges have given it the fullest interpretation: *Lee* v. *Simpson*; *Russell* v. *Smith*.

With respect to the assignment of a copyright previous to the Act 5 and 6 Vict. c. 45, being required to be attested by two witnesses, some judges appear to differ. The 8 of Anne, c. 19, enacted, "that no one shall print or publish books without the consent of the author first had and obtained in writing, and signed in the presence of two or more credible witnesses." The Act of Victoria repeals former statutes, except so far as the continuance of either of them may be necessary for giving effect to proceedings pending at the time of passing of the Act, or right of contract then subsisting. It is therefore construed, that for some purposes the Act of Anne is still in force, though it has been con-

tended that it is virtually repealed by the 54 of Geo. III. c. 156. *Power* v. *Walker* governed the principle for a long series of years, ruling that an assignment without two witnesses amounted only to a licence. A receipt given for money paid as the price of a copyright, would not preclude the vendor from maintaining an action: *Latour* v. *Bland*. These opinions were corroborated in the case of *Davidson* v. *Bohn*, and recognised in the House of Lords in *Jeffries* v. *Boosey*. In *Cumberland* v. *Copeland*, the farce of the "Happiest Day of My Life," with seven other plays, were assigned by the author, Mr. Buckstone, to the plaintiff in 1835, which assignment was attested by only one witness. This was held to be fatal to the validity of the transfer; but the Exchequer Chamber overruled this judgment, on the ground that, after the passing of 54 Geo. III. c. 156, s. 4, in an action for piracy, the consent in writing of the author became a good defence. That being so, the court thought that an assignment in writing, without the attestation of witnesses, was sufficient, and reversed the previous ruling.

By sect. 22 of 5 and 6 Vict. c. 45, the assignment of the copyright of every book containing a dramatic piece, shall not be holden to convey to the assignee the right of representation, unless an entry be made to that effect. This section was passed to amend the defect of the old law, as laid down in *Cumberland* v. *Planchè*, in which it was held that an assignment of the copyright in a drama carried with it the right of representation. But an assignment to represent only cannot be registered at Stationers' Hall, as the section does not apply where there is no "book:" *Lacy* v. *Rhys*. In this case the plaintiff was the assignee to the administrator of the late T. E. Wilks, of whom he purchased by deed "the whole copyright and acting right, without reservation," of a piece called the "Roll of the Drum," and he sued the defendant for six penalties, of forty shillings each, for performing the piece without his consent. Registration is not necessary to the validity of an assignment.

The performance of a play, the copyright of which had been sold by the author, and afterwards assigned by writing to another person, though it does not appear that the original assignment was in writing, may be restrained by injunction. The farce of the "Young Quaker," by O'Keefe, was conveyed by deed to the then proprietors of the Haymarket Theatre, and the Court assumed the title regular till the contrary was shown. Since that period the transfer of copyright in published plays has been much facilitated and simplified by the 5 and 6 Vict., c. 45, by means of registration at Stationers' Hall. Section 13 of that Act makes the assignment of copyright effectual in law, by entry of such assignment in the book of registry at Stationers' Hall; and in the case of any dramatic piece, or musical composition in manuscript (sect. 20), it shall be sufficient to register only the name, and place of abode of the author and proprietor, and time and place of first representation, and such assignment shall not convey the right of representation, unless an entry be made in the registry book to that effect. The registration of a work subsequent to the infringement of copyright has been held good: *Lacy* v. *Rhys*.

A copyright in a play can only be possessed by the author himself in the absence of a legal assignment. An employer, who merely suggests the subject, and has no share in the design or execution of the work, the whole of which, so far as any character or originality belongs to it, flows from the mind of the person employed, cannot have the copyright in a dramatic work, or the right of representation. The right is conferred on the author by the statute which creates it, and no agreement, short of an assignment, entered into with another person, can extinguish it. Where a verbal agreement was entered into between the proprietor of a theatre and an author, to prepare for him a dramatic piece, it was held that the copyright was in the latter, and not in the employer: *Shepherd and Another* v. *Conquest*. The product of the author's brains is his own property in this instance, though not in every. It may be a question whether, under any circumstances, the copyright in a literary work, or the right of representation in a dramatic one, can become vested *ab initio* in an employer, who is not the person who has actually composed or adapted the work. In the above case the plaintiffs agreed, by word of mouth with one Courtney, that the latter should go to Paris for the purpose of adapting a certain piece ("Old Joe and Young Joe") for representation on the English stage; that the plaintiffs should pay all Courtney's expenses, and should have the sole right of representing the piece in London, Courtney retaining the right of representation in the provinces. The piece was brought out at the Surrey Theatre by the plaintiffs, and afterwards at the Grecian Saloon by the defendant, who had obtained an assignment from Courtney. There being no legal assignment from Courtney to Shepherd, or even consent in writing, the latter became merely a licensee, and could not sue for penalties. The case is different where a person forms the original and general design of a piece, and another one merely carries out those designs, as in that of *Hatton* v. *Kean*, in which the defendant verbally employed the plaintiff to compose music as part of the representation of one of Shakspeare's plays, adapted to the stage by the defendant, with the aid of scenery, dresses, music, and other accompaniments, the general design of which was formed by the defendant. Here it was held that, as between the parties, the defendant had the sole liberty of performance without assignment or consent in writing from the plaintiff. This decision appears to be in strict conformity with the principle laid down by Sir John Leach, in *Barfield* v. *Nicholson*, in which he says—"That the person who forms the plan, and who embarks in the speculation of a work, and who employs various persons to compose different parts of it, adapted to their own peculiar acquirements, that he, the person who so forms the plan and scheme of the work, and pays different artists of his own selection, who, upon certain conditions, contribute to it, is the author and proprietor of the work, if not within the literal expression, at least within the equitable meaning of the statute of Anne, which, being a remedial law, is to be construed liberally."

Section 2 of the 3 and 4 Will. IV. c. 15, enacts that "consent in writing of the author, or other proprietor," must be obtained to

permit the representation of any play; but it does not say that it must necessarily be in the handwriting of the author. The consent, then, to represent a play may be given by an agent having due authority. If not limited in its terms, it may apply as well to dramas composed after it was given as to those which were then in existence: *Morton* v. *Copeland*. The plaintiff was a member of the Dramatic Authors' Society, which announced that leave might be obtained from the secretary to represent pieces belonging to the members at certain prices mentioned in a list, and that lists would be published from year to year containing the names of the new pieces. In 1849 the secretary of the Society gave the defendant leave in writing, signed by himself, to play "dramas belonging to the authors forming the Dramatic Authors' Society, upon his punctual transmission of the monthly bills, and payment of the prices for the performance of such dramas." Three pieces were performed belonging to the Society. It was held that the defendant was not liable to penalties; that the document given by the secretary amounted, under the circumstances, to "a consent in writing of the author;" and that it applied to dramas written both before and after the date of the sanction. The onus of proving such a consent will always lie on the defendant. It is a question of fact and not of law, whether there has been a representation of part of a dramatic entertainment under 3 and 4 Will. IV. c. 15: *Planchè* v. *Braham*.

To cause to be represented a dramatic piece within the meaning of the Act, it must be done either personally, by agent, or partners: *Lyons* v. *Knowles*. The defendant here provided the theatre, lights, &c., and received the moneys taken at the doors, and divided them with another person named Dillon, who provided the performers, and selected the pieces for representation. This did not amount to a principal or a partnership, though the defendant took money at the doors. Neither could Dillon be considered agent to defendant. Could either of these positions have been established, the defendant would have been liable. The use and occupation of the theatre, with all its accessories, having been let to Dillon for the purpose of representing whatever pieces he chose, vested the whole control and management in him, and the defendant could have no right of interference in the choice of pieces; and, in short, though the proprietor, he was not the manager. Neither was he a partner; for the receipt of the moneys at the doors was a receipt of gross proceeds, not net profits, and was merely a mode of receiving and securing the rent. The receipt of rent does not make a party liable for a dramatic representation. This was laid down in *Russell* v. *Bryant;* and, in order to make the defendant liable, he must be shown to be either the principal or partner of Dillon, or the latter his agent. Having regard to the object of the Act, and the language of sect. 2, Lord Chief Justice Wilde said, in the case just referred to, "no one can be considered an offender against the provisions of it, so as to subject himself to an action of this nature, unless, by himself or his agent, he actually takes part in a representation, which is a violation of the copyright. And if it were to be held that all those who supply some of the means of representation

to him who actually represents, are to be regarded as thereby constituting him their agent, and thus causing the representation within the meaning of the Act, such a doctrine would, we think, embrace a class of persons not at all intended by the legislature."

Where an actor possessed himself of the MSS. of several plays of a living author, as was the case in *Plunkett* v. *Coyne*, he is not liable to the penalties of causing them to be performed without the author's consent, although an actor in the pieces, but would be liable to the manager, the responsible person, for an imposition by the misrepresentation of facts. The offence is not to play in certain pieces, but to cause them to be represented. It was suggested by the Court that "the cook suggests what shall be provided for dinner;" but it was contended by the defendant, that the manager causes the dinner to be provided by the cook. The question involved a point which the Court was willing to reserve.

The author of a play who makes use of its plot and dialogue in the composition of a novel, does not thereby forfeit his right to restrain infringement of his copyright in the play, although such infringement takes place through the medium of the novel, by a person who was ignorant of the existence of the original play. The indirect appropriation, then, of any portion of the novel taken from the play, is an infringement of the copyright in the play. The plaintiff in *Reade* v. *Lacy*, wrote a play called "Gold," which he afterwards adapted as a novel, embodied a portion of the dialogue, and called it "Never too late to Mend." The novel was dramatized by another person, and, in doing so, portions of the original play were copied word for word, and in that form published by the defendant. It was held that ignorance would not justify the infringement of a right in one case more than another, and that the publication of the play was an infringement of the copyright in "Gold," although the existence of that play was not known to the author, who took his materials from the novel. Had the novel changed hands before the commission of the act complained of, it is difficult to conceive how the plaintiff alone could have obtained an injunction.

An action for dramatizing a novel, and causing it to be represented on the stage without the author's consent, cannot be maintained: *Reade* v. *Conquest*. There is no dramatic copyright in the conception or plan of a book; and a play, simply embodying the plot and characters of a novel, does not, if represented on the stage, amount to an infringement of the copyright within the meaning of the 2nd section of the Dramatic Property Act, which defines copyright to mean "the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the said word is herein applied." It may be a question yet to be decided, how far the dramatizing a novel is an interference with the rights of property. But when the novel is partly composed from a play, as in the preceding case, and those parts introduced into another play, it becomes an infringement of the copyright in the first play, notwithstanding the ignorance of the plaintiff as to the existence of the first play, the text of which was, on some occasions, in consequence of the strong similarity of the "tag" to

the other, inadvertently followed by an actor who had played the same part in "Gold." So in *Lee* v. *Simpson*, where the defendant had purchased the piece which he represented, and believed he had a right, but on proof by the plaintiff that he, the plaintiff, had the right, the judgment was against the defendant. If the plaintiff had been bound to shew the defendant's knowledge, the protection conceded by the statute would be illusory.

In France the law is held to be different. A similar case to that of *Reade* v. *Conquest* occurred in Paris in 1841 (*Le Franc* v. *Paul de Brusset*), where the plaintiff's tale was dramatized and put on the stage. The court held the defendant guilty of counterfeiting the novel, and gave the plaintiff damages.

The incidents of a novel may be made into a drama by mere mechanical arrangement, without fear of a breach of copyright, and the author of the adaptation or abridgment is protected in—what cost him very little mental labour, at least so far as the composition is concerned—his dramatic copyright, borrowed from the novel, which can only be infringed while in manuscript by representation on the stage without permission of the author. But, as soon as this manuscript is transformed into print, the work becomes a piracy of the novel, and the sale of copies of the same may be restrained by injunction or damages sued for under the Act. Plays, then, written in the very words of the author of a novel, cannot be considered fair abridgments if published as a book, but not so if represented as a play. Miss Braddon's novels of "Lady Audley's Secret" and "Aurora Floyd," were dramatized, and about one-third of each, which composed the vital portion, converted into plays, which were represented at the theatres. The main characters and most stirring scenes were copied *verbatim* from the novels, and what was description in the novels were stage directions in the plays. On publication in print, and comparing the contents of the novel with the play, Vice-Chancellor Wood had no hesitation in deciding that the play was an infringement of copyright in the novel. As an instance of the unsatisfactory state of the law upon this subject, the Vice-Chancellor observed—"If this lady (the authoress of the novel in question) wished to protect herself in the matter as the law now stands, all she would have to do would be to take a pair of scissors, and cut out certain scenes, and publish a little drama of her own, because, if she first published a work like this in the shape of a drama, she would come within the protection of the Dramatic Authors' Copyright Act."—*Tinsley* v. *Lacy*.

It will always be a question of fact whether the words extracted are a fair abridgment, or, technically speaking, "any part thereof." As Lord Eldon said—"All human events are equally open to all who wish to add to or improve the materials already collected by others, making an original work." There can be no plagiarism in dramatizing the same incidents. In *Seman* v. *Copeland*, where the action was for having caused to be represented the plaintiff's play, or a portion thereof, proof that the plot had been taken from the same source, namely, that of a newspaper report of some stirring events which took place during the Indian mutiny at Delhi, was a good defence. Here the narrative sug-

gested the plot, and most of the characters alike, in the minds of both parties; but when a scene only from the play of another, mixed up with that which is not original, is infringed, the Court of Equity will protect the author. Copyright, therefore, exists even in the incidents of a play. Thus in *Boucicault* v. *Egan*, an injunction was granted to restrain the representation of the water-cave scene in the plaintiff's drama of "The Colleen Bawn." The defendant had represented a play dramatized from Gerald Griffin's novel of "The Collegians," the parent of the plaintiff's play also; but the scene in question, of which the defendant's representation was a colourable variation, was original, and the most important and effective in the plaintiff's piece, and not contained in the novel. Here the International Copyright Act was not pleaded. (See p. 26.) Copyright exists in a title, and, if infringed, it is not necessary to prove a fraudulent intention. Even if innocently and unconsciously made use of, to the injury of another, the owner is entitled to protection: *Clement* v. *Muddick*.

An injunction will lie to restrain the publication of a play in parts in a public periodical. In *Macklin* v. *Richardson*, the defendant employed a short-hand writer to take down the words of the plaintiff's farce "Love à la Mode," the first act of which he printed in his magazine, and gave notice that the second act would be published in the following month. The Court held that this was a gross piracy, and granted an injunction. But when the proprietor of a publication, called "The Stage," inserted detached extracts, to the number of six pages out of forty, from the farce of "Who's Who, or the Double Impostor," for the purpose of criticism, the motion to perpetuate the injunction was dismissed with costs: *Whittingham* v. *Wooler*.

The statutes of 31 Eliz. c. 5, s. 2, and 21 James I., c. 4, s. 2, requiring that in actions on penal statutes the venue shall be laid in the county where the offence was committed, do not apply to actions for debt brought by a party aggrieved to recover a penalty expressly given to him, but has reference only to proceedings by informers. So in *Planché* v. *Hooper*, where the defendant sued for ten penalties of forty shillings each under the 3 and 4 Will. IV., c. 15, for representing a dramatic piece called the "White Cat." The representation constituting the breach took place at Bath, and the case was tried at Westminster, the Court holding that the venue was rightly laid in Middlesex, thus distinguishing between actions brought simply for penalties, and actions brought under penal statutes to recover compensation for injuries. The same in *Lee* v. *Simpson*, where the defendant represented the plaintiff's pantomime of "Princess Battledore" on the stage at Liverpool, and the trial came on at Westminster, though it was shown that the plaintiff was possessed of the manuscript in the county of Surrey. As a debt, therefore, if under £20 recovered in a superior court, a defendant is protected from being "taken or charged in execution upon any judgment" by the 7 and 8 Vict. c. 96, s. 57. This rule was laid down in *Fitzball* v. *Brook*, where the plaintiff brought his action for the recovery of £12 for six performances of his play of the "Momentous Question," without consent in writing.

COPYRIGHT IN MUSICAL COMPOSITIONS.

The Act 5 and 6 Vict. c. 45 (see Appendix B.), to "amend the law relating to copyright, and to afford greater encouragement to the production of literary works of lasting benefit to the world," was passed on the 1st of July, 1842. The public are mainly indebted for its existence, to the untiring zeal and eloquence of the late lamented Justice Talfourd, who introduced the measure into Parliament, but who, in consequence of his elevation to the bench, was unable to conduct it personally in the House, through which it is said to have been somewhat hurried in its progress, in order to protect the works of Sir Walter Scott and others from the limitations of the Act George III. The Act repeals 8 Anne, c. 19, which first gave to authors that protection which in some degree they had enjoyed previously, by means of special licences. This latter Act gave to the author or proprietor of a book already printed a copyright for twenty-one years; and of a work not published, the sole liberty to print for the term of fourteen years, and, if the author should be then living, a further term of fourteen years to continue in him.

The 41 George III. c. 107, which passed immediately after the union with Ireland, and which extended the provisions of 8 Anne to that country, is repealed, and also the 54 George III. c. 156, for the further encouragement of learning, by securing the copies and copyright of printed books to the authors or their assigns. The last-mentioned Act extended the period of copyright from fourteen to twenty-eight years, and if the author was living at the expiration of that term, then for the residue of his life.

The present Act (sect. 3) provides for the duration of copyright, if published in the author's lifetime, for his life, and seven years after his death, or forty-two years from the time of first publication, or, if published after the author's death, for forty-two years from the time of first publication. And section 15 enacts, that if any person shall print or cause to be printed, either for sale or exportation, any book in which there shall be a subsisting copyright, without consent in writing of the proprietor thereof; or shall import for sale or hire any such book; or, knowing such book to have been unlawfully printed or imported, shall sell, publish, or expose for sale or hire, without consent, shall be liable to special action on the case. All copies unlawfully printed or imported are forfeited, or damages may be demanded for detaining the same.

For the sake of comparison it may be as well to state here the duration of copyright in the various European nations, and

particularly those of France and America. In France, copyright in dramatic and musical compositions, by natives or foreigners, endures for the life of the author, and ten years after to his heirs or assigns, or his widow for life, and thirty years after to her children. Copyright needs no registration, but arises on first publication or representation. Before legal proceedings can be taken in respect thereof, a copy must be sent to the Bibliothèque and the Minister of the Interior. Piracy is a misdemeanour, and carries with it a penalty of from 100 to 2000 francs, and against the utterer 25 to 500 francs, besides the liability of the parties to a civil action for damages. In the United States, copyright exists for twenty-eight years, and may be renewed by author if living, or if dead, by widow or children for other fourteen years, which must be published in the newspapers, and registered by the clerk of the district, to whom, and the Smithsonian Institution and Congress Library, a copy must be sent. The remedies are by injunction, and, in the case of piracy of MSS., action on the case for damages. The penalties for violation are forfeiture of every book copy, and 50 cents for each sheet; plates and copies are forfeited, and one dollar for each sheet. There is a further penalty of 100 dollars for falsely publishing on the title-page that the copyright has been secured. In Greece and Sardinia, the copyright lasts for fifteen years from the date of publication; in the Roman States, twelve years after the author's death; in Russia, twenty-five years after the author's death, and for ten years more if a new edition has been published in the last five years of the first term. In Belgium and Sweden, twenty years after the author's death, with a provision in Sweden, that, should the representative of the author neglect to continue the publication, the copyright falls to the State. In Spain, fifty years, reckoning from the author's death. In Austria, Bavaria, Portugal, Prussia, Saxony, the kingdom of the Two Sicilies, Wurtemberg, and the States of the Germanic Confederation, thirty years from the author's death, to all his heirs and assigns without distinction; and in Denmark, thirty years after the author's death, with a provision that republication by others is permitted when five years have elapsed in which a work has been out of print.

Notwithstanding the provisions of the 8 Anne, c. 19, it has been ably contended at various periods that copyright existed in printed publications at common law. In 1769, Lord Mansfield and other judges, forming a majority, were in favour of the common law right at the trial of the great case of *Millar* v. *Taylor*, which judgment, on appeal five years later to the House of Lords, was reversed. The House, within the last few years, in *Jeffries* v. *Boosey*, has confirmed their previous ruling, by pronouncing copyright to be a "creature of the statute." In Scotland, too, the dictum of a common law copyright, independent of the statute, was governed by the case of *Hinton* v. *Donaldson*. Allan Ramsay's "Songs of Scotland" were protected by an order of council at Edinburgh, under the penalty of "twenty pounds Scots." By sect. 25, copyright is deemed personal property, and transmissible by bequest;

or, in case of intestacy, subject to the same law of distribution as other personal property.

The interpretation clause of the Act of 5 and 6 Vict. c. 45, (sect. 2,) construes the word "book" to mean every volume, part, or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan separately published. The term, as thus limited, does not include designs for ornamenting articles of manufacture, although published in the form of a book, separate arrangements for the protection of which are made by the Copyright of Designs Acts. The definition given by the Act to the word "book," with regard to the sheet of music, only supersedes the previous ruling at common law. A liberal interpretation was given by the courts in favour of musical compositions, by ruling that a single sheet of music constituted a "book:" *Clementini* v. *Golding*.

Music being protected as a book by the Act, the reasoning respecting books applies to music. The terms being synonymous, and the legislative provisions identical, it is impossible to treat of music here in a separate form.

Copyright is not only protected by statute, but more frequently by the intervention of the Court of Equity, on the ground that the procedure at common law is cumbrous and tedious, pending which incalculable injury might be inflicted on the plaintiff in respect to the value and disposition of his copyright, or power of restraining future infringement; and that damages at law do not give adequate relief. The Court acts on the principle of *protecting* property alone. Whenever a person's legal rights are invaded, so that relief at common law cannot be obtained, the Court will interfere at once by injunction to restrain and demand a full account of the extent of the injury inflicted, or cause an inquiry to be opened as to the extent of damages sustained: *Novello* v. *James*. But the usual practice is, that when a party, seeking equitable relief, is incidentally entitled to the benefit of a penalty or forfeiture, the Court requires him as a condition of its assistance, to waive the claim: *Mason* v. *Murray*. And if a plaintiff refuses all he is entitled to for the purpose of harassing the defendant, the Court will refuse him his subsequent costs. The recovery of printed copies of a book must be enforced at common law. It appears there is no right to demand printed copies to be given up if the original work has not been registered; and it is a question whether the copies could be ordered to be delivered up in a suit to which the person at whose expense and on whose account they had been printed was not a party: *Colburn* v. *Simons*. Injunctions of this kind do not often come to a hearing for the purpose of being dissolved; they are generally acquiesced in, and no account required. Under any circumstances, the Court will not give an account of the sale of printed copies if it does not grant an injunction. The injunction is the ground of the account, and the account is consequential. Where a perpetual injunction is granted, the Court will decide the amount: *Tinsley* v. *Lacy*. If an infringement is proved, there is no occasion to send the case before a jury. Formerly, in cases when it was doubtful whether an action at law could be maintained, the Court would refuse relief, and order

the case to the common law courts to certify as to title, and, if a return in the affirmative was given, an injunction to restrain would issue forthwith. A negative return will not always put an end to the cause if the plaintiff chose to carry the case to a hearing. The 25 and 26 Vict. c. 42 (called Rolt's Act), enables the Court of Chancery to determine questions of law and fact incident to the relief sought, but when questions of fact may be more conveniently sued in any of the superior common law courts, issues may be directed: *Re Hooper*. When the infringement is a colourable imitation, an injunction *ex parte* will be granted, and the matter of examination and comparison referred to the Master, upon whose report the Court will act. Lord Cottenham was inclined to think that when a question existed whether a publication was a fair abridgment, the Court ought not to exercise its jurisdiction; or, if it did, it may possibly come into collision with the finding of the common law courts. This opinion has borne little weight with the rest of the judges; and, where the right has depended upon a long uninterrupted usage and possession, the Court has uniformly held that sufficient of itself to form a good equitable title, and where justice requires it, an injunction may be granted at once on production of affidavits and evidence necessary to support the cause: *Mawman* v. *Tegg*. But when the holder of the legal title can be discovered, he should be made a party to the suit: *Chappell* v. *Purday*.

In order to procure an injunction it is not enough to say that a copy has been purchased or legally acquired; for, as no one but the author or assignee has title under the statute, the plaintiff must show the assignment: *Coulburn* v. *Duncombe*. If he claims as assignee of an assignee, he need not produce the original assignment to his assignors: *Morris* v. *Kelly*. But when the title depends on the effect of an agreement, or when plaintiff has suffered persons to publish the subject of his copyright without interposition, the Court will not interfere: *Walcot* v. *Walker*. But this acquiescence is no proof of assignment, even if a receipt is produced for money paid for copyright. Or where a *primâ facie* title is not shown, as in *Platt* v. *Button*, where the plaintiff claimed protection to the music of certain dances which he had permitted several persons to publish. A delay in applying to the Court may defeat the right, and leave the party to the remedy at common law: *Tinsley* v. *Lacy*.

Acquiescence in part goes a great way with the Court to sanction the whole, unless early application be made to restrain. Where the conduct of the plaintiff had been such as to lead to the supposition that the publication would not be objected to, the Court would afford no remedy. So in *Shand* v. *Webb*, where the stipulation of an agreement to sell cheap editions of eight songs, belonging to Henry Russell's entertainment of "Life in the Far West," had been systematically violated.

Lapse of time in regard to any composition, however insignificant, will not sanction the adoption of the copyright by any one besides the proprietor, within the period stated in the Act. The

"Doxology" was published in 1816, and had been for some time out of print. In 1855 the copyright was bought of the composer, but just previously it was ascertained that the composition had been printed with some dozen alterations, and set to other words: *Hart* v. *Morgan*.

No copyright can exist consistently with public policy in any work of a clearly irreligious, immoral, libellous, or obscene description (*Stockdale* v. *Onwhyn;*) though Lord Eldon held that, when the moral right was doubtful, the defendant should have the benefit of it. In such cases the Court simply withholds its aid from those who, upon their own showing, have no title to protection. The Court only protects the legal right, and has no power to punish or prevent personal injuries, which are left to be dealt with by law, and probably through the intervention of a jury. Neither is there any copyright in a composition which is calculated to disturb the public peace, or bring into contempt the administration of justice. In *Hine* v. *Dale*, the suit was for printing the words of a song called "Abraham Newland," which approached very nearly the line of distinction between bad and indifferent. The mischievous tendency of the publication would sufficiently appear, it was contended, from the following stanza:—

"The world is inclined
To think justice blind;
Yet what of all that?
She will blink like a bat
At sight of friend Abraham Newland.
O Abraham Newland! magical Abraham Newland.
Tho' justice, 'tis known,
Can see through a millstone,
She can't see through Abraham Newland."

It was contended that the song professed to be a panegyric on money, but was in reality a gross and nefarious libel on the solemn administration of justice. The Court thought the composition was not so gross as to affect the public morals, or the argument would as forcibly apply to the "Beggars' Opera," where the language and allusions are sufficiently derogatory to the administration of justice.

A musical publication, alleged to be a fraudulent imitation, may be prohibited by injunction on the ground of fraud, independent of copyright; but the injunction will only be granted on the plaintiff's undertaking to bring an action, and be answerable for damages: *Chappell* v. *Davidson*.

What may be the subject of copyright is a matter sometimes not easily dissolved, and judges have differed as to what or how much constitutes a piracy. Lord Cottenham repudiated the doctrine that quantity alone was essential. A fair abridgment or an abstract is not an infringement: *Chappell* v. *Purday*. "When it comes to a question of quantity," said his lordship, "it must be very vague. One writer might take all the vital parts of another's book, though it might be but a small proportion of the book in quantity. It is not only quantity but value that is looked to:" *Bramwell* v. *Holcomb*. And Lord Eldon remarked, that a person who copies part of

a work, however small, with an *animus furandi*, takes the work of another. If, therefore, the part pirated bears but a small proportion to the entire work, if that part be the most material, such, for instance, as extracting what is new from a new edition of a work, an injunction will be granted. But where only eight consecutive bars, taken from the opera of "Amilie," were inserted in the song of "The Ship on Fire," and which constituted but a small proportion of the eleven pages of the song, the Court, on application to dissolve, would not discontinue the injunction: *Russell* v. *Smith*.

Piracy may be of part of an air, as well as of the whole, and though accompaniments may be composed to it and adapted for dancing only, of which but a small part of the merit belongs to the original author, it is, nevertheless, an adaptation of the copyright. So with respect to quadrilles and waltzes composed by Musard abroad, upon airs in Auber's opera of "Lestocq." Respecting what may be sufficient to constitute a piracy in a musical composition, the late Lord Lyndhurst observed, in *D'Almaine* v. *Boosey*—"I remember, in a case of copyright, a question arising as to how many bars were necessary for the constitution of a subject or phrase. Sir George Smart, who was a witness in the case, said that a mere bar did not constitute a phrase, though three or four bars might do so. Now it appears to me, that if you take from the composition of an author all those bars consecutively which form the entire air or melody, without any material alteration, it is a piracy; though, on the other hand, you might take them in a different order, or broken by the intersection of others, like words, in such a manner as should not be a piracy. It must depend on whether the air taken is substantially the same with the original. Now the most unlettered in music can distinguish one song from another, and the mere adaptation of the air, either by changing it to a dance, or by transferring it from one instrument to another, does not, even to common apprehensions, alter the original subject. The ear tells you that it is the same. The original air requires the aid of genius for its construction, but a mere mechanic in music can make the adaptation or accompaniment. Substantially, the piracy is, where the appropriated music, though adapted to a different purpose from that of the original, may still be recognized by the ear. The adding variations makes no difference in the principle." The difference between the original and the borrowed, often depends upon the most minute distinction. There can be no monopoly of thought or expression, and language is common to all. There must be, therefore, unavoidably much of the old and well-known mixed up with the new and peculiar. The question, upon the whole, is whether there has been a legitimate use of another's publication, in the fair exercise of a mental operation deserving the character of an original work.

With reference to the question of adapting accompaniments to old airs, it is an act of piracy if there exists a copyright in the song, as in the case of *D'Almaine* v. *Boosey*, where the plaintiff published the airs of an opera in the form of quadrilles and waltzes. So also with reference to the piece of music called

"Pestal," which had been played by the military bands in the style of a Russian Polonaise. The plaintiff, in an action for infringement, had got possession of the score—it did not transpire how—set it to words, concocted a thrilling introductory anecdote, and sold the copyright to a music-seller, who published it with success. Other publishers arranged new versions of song and verse, for which the proprietor recovered damages. The coincidence between the harmonies and accompaniments in such a case, must be relied on as forming the part alone in which copyright exists. The original composition, if not claimed by any one, becomes public property; and one person has as much right to publish it as another. The argument of the late Serjeant Talfourd, that the airs heretofore "floating about the cabins and recesses of Ireland, now that they are married to immortal verse, becomes the subject of copyright," scarcely appears tenable because one chooses to adopt them. A copyright in the music might exist distinct from the words, which are not so closely related to the song as an accompaniment. But the principle has to some extent been advanced in *Lover* v. *Davidson*, where the defendant pirated a song called "The Low-back'd Car." The words, the prelude, and the accompaniments, were entirely written and composed by the plaintiff, but the air was an old one, known by the name of "The Jolly Ploughboy." In that case the plaintiff was justified in describing himself the proprietor of the entire composition.

Publication of the words of a song by other than the proprietor, if in ever so cheap a form, is a piracy: *Hopwood* v. *Wood*. Copyright is one and indivisible, and there can be no such thing as a partial assignment: *Lord St. Leonards, Boosey's case, H. L.* The case of *Leader* v. *Cocks* favours this doctrine. It was there laid down, that one who adapts words to an old air, and procures a friend to compose an accompaniment thereto, acquires a copyright in both words and accompaniment, and his assignee, in declaring for an infringement, may describe himself the proprietor of the copyright in the whole composition. In *Chappell* v. *Sheard and Another*, Vice-Chancellor Wood said, that in order to perfect a copyright in a work of which one person is only partially the author, he need not register more than his own part of the composition. Here, in like manner, where new words had been adapted to an old American melody known as "Lillie Dale," in which there was no copyright, to which was added a symphony and accompaniments, and a cadence at the close, and entitled "Minnie," with a portrait of Madame Ann Thillon; and the defendant published a song to the same air, and called it "Minnie Dale," with a similar portrait but different words, and represented it as having been sung by the same lady, it was held that the plaintiff had obtained a right of property in the name and description of his song, which the Court of Equity, as in the case of dramatic representations and literature, would restrain any person from infringing; and that the publication of the defendant's song was a palpable attempt to induce the public to believe that the song so published was the same as that of the first publisher's. As Lord Jeffrey once said, "The

alterations only make the case worse, as they indicate that the party has resorted to a device like that used in regard to stolen goods, of altering the marks on them to prevent identification." In another suit, where the facts were nearly similar, and the title, "Minnie, dear Minnie," it was held to be an obvious attempt to pass off the defendant's publication for that of the plaintiff's, which had obtained the public favour. Neither could the defendant escape his liability by cautioning his shopmen to explain to the customers that his song was not the same as the plaintiff's, because he could not secure that retail dealers purchasing from him would give the same information to their customers. The Court refused to extend the injunction to restrain the piracy of two bars of music which had been added by the plaintiff to the original air, until the fact had been established by a trial at law. The principle here expounded appears to be, that when a great resemblance exists between a spurious article and the original, by the design or mention of words, although in both cases not exactly alike, which attract the eye and convey an idea that the article is genuine, whereby the public is deceived, it is a colourable representation of the original, and a piracy of the author's copyright: *Chappell* v. *Davidson*.

A work consisting partly of compilations and selections from former works, and partly of original compositions, may be the subject of copyright in the editor, provided it be not a pretext for stealing the copyright, so as to make it a substitute for the original work; or a work on which the plan, arrangement, and combination of notes, composed of materials drawn from different sources (see *Hatton* v. *Kean*, p. 4); or original notes to an old work, whether produced by personal application or possessed by gift. But the extent of the injunction must depend on the amount of proof and the nature of the work.

An injunction will lie for representing a work to be the same as one already published by another author, or an action may be maintained for publishing an inaccurate edition, falsely purporting it to be executed by the original author; the question of piracy being one for the jury to determine, and the inaccuracies as to the damage of reputation, for the Court. The using of a fictitious name by the author will not affect the copyright.

Where a person improves upon another's labours, and sells cheaper, that is no defence, as it affords an inference that at least most part of the contents must have been copied. Such an abridgment is not an exercise of mental labour, deserving the character of an original work. In *Dickens* v. *Lee*, the defendant had taken the fable, characters, incidents, names, and even the style of language, and, as it were, told the story in a shorter manner. For this an injunction was maintained.

The public recitation of a published copyright is not a piracy, but copies of the book must not be distributed among the audience afterwards. This would amount to a multiplication of copies under the Act.

An unpublished manuscript will be protected on the ground

that the author not having made the work *publici juris*, it is his private property, and protected by common law. This dictum of the law is supported by several decisions here and in Scotland; and recently, in *Prince Albert* v. *Strange*, where the defendant had surreptitiously become possessed, through a third person, of some etchings sent by his Royal Highness to be engraved. The Court ordered impressions to be delivered up, without giving the defendant an opportunity of trying the question of property at law. Before the passing of the Dramatic Copyright Act, the performance of plays was restrained on the same principle (see *Murray* v. *Elliston*, and *Coleman* v. *Wathen*, p. 1). Under the bankruptcy of an author, an unpublished MS. is not available for publication by creditors' assignees.

An injunction will restrain the publication of a MS. given to another with the understanding that it should not be published. Also for lithographing copies of music for private use, and not for the purpose of sale or exportation. The members of the Liverpool Philharmonic Society, who perform gratuitously, made impressions of a musical composition, called "Benedict's Part-song—The Wreath," and distributed them solely among themselves; this was held to be an infringement of the author's "sole and exclusive right and liberty of printing, or otherwise multiplying, copies" of any subject to which the word "copyright" is applied: *Novello* v. *Ludlow*. A presentation of copies, on the part of the author, does not amount to a publication.

An injunction will restrain publication of the work of an author gone abroad, if the genuineness is not disputed.

Section 13 of the Copyright Act provides for the assignment of copyright by registration, but does not annul transfer by deed, which need not be attested: *Cumberland* v. *Copeland*. Copyright may be assigned for a period of time, but not to any particular locality: *Boosey's Case*. Non-registration does not affect copyright, nor the irregularity of not sending copies to the libraries; but a work, the subject of infringement, must be registered, and duly presented to the libraries, previous to the commencement of legal proceedings. The representation alone of a musical composition cannot be registered: *Lacy* v. *Rhys*. The name of the author is not required to be stated unless he is the proprietor. The Act does not provide for any special terms in the transfer of copyright, therefore, if assigned by deed, the agreement or stamp cannot be avoided, or, if the statutory transfer is adopted, in case of a mortgage the stamp must be impressed on the instrument.

By section 14, persons aggrieved by any entry in the book of registry, may apply to a Court or judge to vary or expunge the same. Making a false entry is, by section 12, a misdemeanour. In *Boosey* v. *Purday*, the question was, whether the opera of "Fra Diavolo" was first published in Great Britain or Milan, and until the Court were satisfied on this point, no order could be made to expunge an entry from the register at Stationers' Hall. An additional entry having been made at Stationers' Hall concerning the copyright of Auber's opera of "Fra Diavolo," subsequent to

the commencement of disputes, on application, under section 14, to have the entries expunged, the plaintiff consented that the entry should not be given in evidence at the trial for an infringement of copyright: *Chappell* v. *Purday*. In *Cocks* v. *Davidson* the plaintiff refused to acquiesce in the suggestion, that the entries should not be used at the trial, which would be doing away with his *primâ facie* evidence under section 14 of the Act; but Lord Campbell, without consent, ordered that the entries should not be used at the trial, as to whether there was copyright in the music in question, remarking, "that if the entry is expunged, Cocks loses his title for ever. The legislature did not intend that there should be a final decision on the question of property on affidavit;" but, in a subsequent case, *ex parte Davidson*, the power exercised by the Court of Queen's Bench was repudiated. There, upon clear and unequivocal proof by affidavit, that the entry was false, and, by varying the entry, it could be made true, an order of the Court was granted. The name of the agent had, in this case, been registered by mistake instead of the author.

Having heard or seen parts of an opera previously performed, is no proof, without accounting for the non-production of the printed copies, that the plaintiff was not the proprietor at the time of the grievance. It is sufficient for the defendant to state the year of the first publication, without specifying the day or month; but he is bound to state the name of the party whom he alleges to be the proprietor or first publisher, the title of the work, the place where and the time of first publication: *Boosey* v. *Davidson*. Points not raised in the objections cannot be raised at the trial: *Leader* v. *Purday*. The objections must be definite, but it might be objected that a certain person, if any one, and not the plaintiff, was the proprietor, and that at the time of the alleged grievance no copyright subsisted. A case for an *ex parte* injunction must be stated fully and fairly, though it is not necessary to specify, either in the bill or affidavits, the parts of the work printed, but sufficient to allege generally, and leave the printed passages to be pointed out by counsel, and, if they cannot be separated from the original, an injunction will lie to restrain the whole. Separate bills must be filed against each of the parties selling a spurious edition; or, if the defendant transfers his interest in the publication to another person, it seems that the latter may be made a party in the suit: *Lilly* v. *Doig*. Where a joint proprietorship exists, either party may sue.

On dissolution of partnership in the management of a publication, a partner alone is not justified in advertising its discontinuance, as the title is the property of all, and forms part of the assets; but he may advertise a similar work under a new title, or his discontinuance with the previous work: *Bradbury* v. *Dickens*.

Although a publisher may be deceived in the copyright of a song, he is liable to damages for publishing it. On such an occasion damages will be estimated as nominal; as where a person falsely represents to a publisher that he is the author of the production in question, and the latter publishes it on the faith of such representation. A publisher has a lien on a copyright for

advances made, if by agreement, and the Court has jurisdiction to enforce specific performance of an agreement relating to copyright. If a party sells his copyright, and covenants not to publish any other work to prejudice it, the purchaser of a similar work from the same author, though there be no piracy, will be restrained from publishing the subsequent work, though ignorant of the existence of the covenant: *Barfield* v. *Nicholson*. Where a person agrees that a certain number of copies of a work shall be printed and sold at a given price for a certain sum, he does not forfeit the copyright. The first publisher may sue another who has improperly obtained a copy in the first instance. A joint agreement between author and publisher to share profits after the publication of an edition, and where no new expenses have been incurred, may be terminated, although the publisher might have stereotyped the work.

A printer cannot recover unless he attaches his name to the publication.

The Colonies have the power of making their own laws on any subject which are not repugnant to any Act of the Imperial Parliament which, by "express enactment or by necessary intendment," extends to the Colonies. The following Colonies have availed themselves of the provisions of our Copyright Act: Canada, St. Vincent, Jamaica, Mauritius, Nevis, Grenada, Newfoundland, New Brunswick, St. Lucia, St. Kitts, British Guiana, Prince Edward's Island, Barbadoes, Bermuda, the Bahamas, Cape of Good Hope, Nova Scotia, Antigua, and Natal.

DRAMATIC COPYRIGHT IN MUSICAL COMPOSITIONS.

The Literary Copyright Act, the 5 and 6 Vict. c. 45, extends the provisions of the 3 and 4 Will. IV. c. 15, to musical compositions, whether dramatic or not; and provides similar remedies in case of infringement. Indeed the copyright in musical compositions is more extensively protected than the copyright in dramatic pieces. The Act of Will. limits the privilege thereby conferred on authors to representing "at any place or places of dramatic entertainment," whilst the Act of Vict., with reference to music, omits entirely all mention of where the music might or might not be performed.

Human actions, exhibited by means of language, constitute the dramatic art; it therefore follows that the language of the drama, a term which means an action, must be a dialogue. The representation or delivery of a dialogue by one person alone, in point of law, is held to be dramatic.

In an action brought by *Henry Russell* against *Henry Smith*, both musical composers and singers, for a piracy of the plaintiff's song of "The Ship on Fire," it was decided that a song which describes the feelings in vehement language, and sometimes expresses them in the supposed words of the parties, is a dramatic representation within the meaning of section 20 of 5 and 6 Vict. c. 45, though it be sung only by one person, giving effect to the voice by his delivery, but not assisted by scenery or appropriate dress. And the proprietor of such musical composition may maintain an action for infringement of his exclusive right to perform it, without having first registered it, according to 5 and 6 Vict. c. 45, s. 13. The song in question described a ship taking fire at sea, the distress, and finally the escape, of the persons on board, and their words and actions during the several incidents. The concluding lines of the song will give some idea of the amount of dramatic effect the whole composition contained. The words are as follows:—

> "Ho! a sail! Ho! a sail! cried the man on the lee,
> Ho! a sail! and they turn'd their glad eyes o'er the sea;
> They see us, they see us, the signal is waved,
> They bear down upon us; thank God! we are saved."

It was objected at the trial, (1) That "The Ship on Fire," being merely a song, was not a "musical composition" within sect. 20 of 5 and 6 Vict. c. 45. (2) That Crosby Hall was not a "place of dramatic entertainment" within the meaning of 3 and 4 Will. IV. c. 15, s. 1. And (3) That assuming "The Ship on Fire" to be a "musical composition" within the statutes, the work should be registered agreeably to 5 and 6 Vict. c. 45, s. 13.

It was contended by Mr. Serjeant Talfourd, with some success, that "the piece in question is dramatic. It depicts passing incidents by their effect on the feelings and conduct of persons who are represented speaking. That the whole is expressed in music makes no difference; the early Greek drama was musical throughout; so is the modern Italian opera. Nor can any distinction arise from the want of scenery or appropriate dress: an oratorio has neither; yet it is often dramatic. Nor, again, is it material that no second person performs. No one would have suggested that Mr. Matthews' representation, or the readings of Shakspeare by Mrs. Siddons or Mr. Charles Kemble, were not dramatic."

Lord Chief Justice Denman, in his judgment, observed, that the words of the Act comprehend any piece which could be called dramatic in its widest sense—any piece which, on being presented to an audience, would produce the emotions which are the purpose of the regular drama, and which constitute the entertainment of the audience. If it were held that there could be no public representation without regular stage accessories, it would be taking away part of the protection conferred on authors which the statute was intended to provide. According to the interpretation clause, the words "dramatic piece" is construed to mean any stage play, or other "scenic musical or dramatic entertainment." It therefore follows that Crosby Hall, which was fitted up with a stage for the performer, and seats for the audience, for the public representation, for profit, of this species of composition, became a place of dramatic entertainment for the time being. It was thrown out that "when Punch is performed in the street, the street becomes a place of scenic entertainment." Lord Denman further remarked, that "the use for the time in question, and not for a former time, is the essential fact. As a regular theatre may be a lecture-room, ball-room, and concert-room on successive days, a room used ordinarily for either of these purposes would become so for the time being. A theatre is used for the representation of a regular stage play. In this sense, as the 'Ship on Fire' was a dramatic piece, in our view Crosby Hall, when used for the public representation and performance of it for profit, became a place of dramatic entertainment. In thus deciding, we do not declare that the defendant's performances were unlawful without a theatrical licence, within the 6 and 7 Vict. c. 68, and as to this we would remark that the generic term in this statute is 'stage play,' whereas in the 5 and 6 Vict. c. 45, it is 'dramatic piece;' and there is some difference in the interpretation given of these terms in the respective statutes; and also that the provision of the last statute is the maintenance of good order by the police, and that of the first is compensation to composers by securing literary property." The exception contained in clause 20, in favour of the sole representation of a dramatic piece, is extended to the performance of a musical composition, by the proviso contained in clause 24 as to non-registration.

It is a question for the jury to determine whether the representation of part of a dramatic production is within the operation of

the statute. In *Planche* v. *Braham*, the defendant sang two or three songs, of the plaintiff's libretto to an opera, and one in particular commencing with the words,

"Ocean! thou mighty monster!"

it was held that this was an infringement of the plaintiff's sole right of representation.

A suit may also be instituted in equity to restrain the performance of songs, and musical compositions, other than by the lawful proprietor.

A person who lets a room to another for the purpose of holding a concert, supplies benches and lights, and disposes of tickets of admission, and derives no other profit than that arising from the letting of the room, is not liable to an action at the suit of the author or proprietor of a copyright of an entertainment performed therein for a breach, unless he or his agent actually takes part in the representation, which is a violation of the copyright: *Russell* v. *Briant*.

The Act gives to proprietors all the remedies provided by the 3 and 4 William IV. c. 15, s. 2 (see Appendix A.); and though, in the case of books, no proprietor of copyright shall sue for an infringement of the sole liberty of representing a dramatic piece, before making entry in the book of registry at Stationers' Hall, the right to recover is not prejudiced by an omission to register on the part of the proprietor.

INTERNATIONAL COPYRIGHT IN THE DRAMA AND MUSICAL COMPOSITIONS.

THE law as regarded International Copyright, previous to the final decisions on the subject in the House of Lords, in the case of *Jeffreys* v. *Boosey*, was in a very unsatisfactory state. The ruling of the Equity and Common Law Courts had been so conflicting, as to make it difficult to understand which were the prevailing principles. In 1835 the question of copyright in this country in the works of foreign authors, either resident here or abroad, was decided in the affirmative, and confirmed by subsequent decisions in the case of *Bentley* v. *Foster*, *Cocks* v. *Purday*, *Boosey* v. *Davidson*, *D'Almaine* v. *Boosey*, and *Ollendorf* v. *Black*. The cases that supported the negative were *Clementina* v. *Walker*, *Delondre* v. *Shaw*, *Chappell* v. *Purday*, and *Boosey* v. *Purday*. This anomalous state of the law was at length made clear, by the decision in the House of Lords in the suit above referred to, *Jeffreys* v. *Boosey*. The action was originally tried in 1854 before Mr. Baron Rolfe (Lord Chancellor at the time of appeal). From the facts stated, it appears that M. Bellini, an alien, and composer of the opera of "La Somnambula," then resident at Milan, assigned to one Ricordi, also an alien, and resident there, according to the law of their country, his right in the musical composition, of which he was the author, and which was then unpublished. The assignee brought the composition to this country, and, before publication, assigned it, according to the forms required by the law of this country, to Boosey, an Englishman. The first publication took place in this country. The learned judge, in conformity with the decision in *Boosey* v. *Purday*, directed the jury, that the matters given in evidence were not sufficient to entitle the plaintiff to a verdict. A bill of exceptions was tendered and heard before the judges of the Court of Exchequer, when judgment was given, declaring the direction at the trial to be wrong. A writ of error was thereupon brought into the House of Lords. The opinions of ten judges were taken at the bar of the House, six of whom were against the decision of the Exchequer Chamber, and four in favour. The House reversed the decision of the Exchequer Chamber, and affirmed that of the Court of Exchequer, ruling that a foreign author cannot, by assigning his copyright according to the law of his country, give that assignee a copyright which will be recognized in England, so as to entitle the purchaser of it here to the right of exclusive publication. The House in delivering judgment, in order to meet the arguments of some of the judges, took occasion to confirm the dictum of the law, as laid down in the celebrated case of *Miller* v.

Taylor; that copyright after first publication "was a creature of the statute." By "first publication" is meant a publication in this kingdom. An Englishman, though resident abroad, may have a copyright in a work first published in this country; but if a foreigner is not in this country at the time of publication, he is not within the statute, though the work should be published here before it is published abroad. The object of the statute is to encourage literature among British subjects, which description includes such foreigners as, by residence here, owe the crown a temporary allegiance; and any such foreigner, first publishing his work in this country, has a copyright, no matter whether he came here solely with a view to publication. A contemporary publication abroad, by an author entitled to copyright in this country, does not defeat his right: *Cocks* v. *Purday*. Though the questions were not before the House, it was held that copyright was one and indivisible, and could not be jointly claimed. Neither could a partial assignment be made to limit the possession in one person to the united kingdom, and another to the colonies; also that a necessity exists for the printing of books in this country.

The alteration effected in the law of international copyright by the Act of 7 and 8 Vict. c. 12, and the reciprocal conventions it has given rise to with foreign powers, do not appear to give complete satisfaction. The Act repeals the former Act on the subject (1 and 2 Vict. c. 59), and gives to all countries the benefit of reciprocity, if they choose to avail themselves of it.

By sect. 1 her Majesty, by Order in Council, may direct that authors of works first published in foreign countries shall have copyright therein, within her Majesty's dominions, for such period as shall be defined in such Order, which is not to exceed the term of copyright allotted to works first published in this country under the 5 and 6 Vict. c. 45, and subject (sect. 2) to similar provisions as to registration, &c., of that Act. Copies of books, wherein copyright subsists under this Act, printed in foreign countries other than those wherein the book was first published, are prohibited to be imported; and no Order in Council will have any effect unless it states that reciprocal protection is secured.

With reference to dramatic pieces and musical compositions, sect. 5 of the Act provides "that it shall be lawful for her Majesty, by any Order of her Majesty in Council, to direct that the authors of dramatic pieces and musical compositions which shall, after a future time to be specified in such Order, be first publicly represented or performed in any foreign country to be named in such Order, shall have the sole liberty of representing or performing in any part of the British dominions such dramatic pieces or musical compositions during such period as shall be defined in such Order, not exceeding the period during which authors of dramatic pieces and musical compositions, first publicly represented or performed in the United Kingdom, may for the time be entitled by law to the sole liberty of representing and performing the same; and from and after the time so specified in any such last-mentioned Order, the enactments of the said Dramatic Literary Property Act, and

of the said Copyright Amendment Act, and of any other Act for the time being in force, with relation to the liberty of publicly representing and performing dramatic pieces or musical compositions, shall, subject to such limitations as to the duration of the right conferred by any such Order as shall be therein contained, apply to and be in force, in respect of the dramatic pieces and musical compositions to which such Order shall extend, and which shall have been registered as hereinafter is provided, in such and the same manner as if such dramatic pieces and musical compositions had been first publicly represented and performed in the British dominions, save and except such of the said enactments, or such parts thereof, as shall be excepted in such Order." Provided always (sect. 6) that no author of any book, dramatic piece, or musical composition, or his executors, administrators, or assigns, shall be entitled to the benefit of this Act, or of any Order in Council to be issued in pursuance thereof, unless within a time or times to be in that behalf prescribed in each such Order in Council, such book, dramatic piece, or musical composition, "shall have been so registered, and such copy thereof shall have been so delivered, as hereinafter is mentioned; (that is to say) as regards such book, and also such dramatic piece or musical composition (in the event of the same having been printed), the title to the copy thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor of the copyright thereof, the time and place of the first publication, representation, or performance thereof, as the case may be, in the foreign country named in the Order in Council, which, under the benefits of this Act, shall be claimed, shall be entered in the register book of the Company of Stationers in London, and one printed copy of the whole of such book, and of such dramatic performance or musical composition, in the event of the same having been printed, and of every volume thereof, upon the best paper upon which the largest number or impression of the book, dramatic piece, or musical composition shall have been printed for sale, together with all maps and prints relating thereto, shall be delivered to the officer of the Company of Stationers, at the Hall of the said Company; and as regards dramatic pieces and musical compositions in manuscript, the title to the same, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor of the right of representing or performing the same, and the time and place of the first representation or performance thereof in the country, named in the Order of Council under which the benefits of the Act shall be claimed, shall be entered in the said register book of the said Company of Stationers in London."

In case of books, &c., published anonymously, the entry of the name and place of abode of the publisher is sufficient to be registered. Such registry is governed by the provisions of the Copyright Act, excepting the charge of one shilling instead of five for registration, which is *primâ facie* proof of first publication, and can be expunged or varied only by order of a judge on proof of wrongful publication. Books are prohibited from importation

unless by consent of the registered proprietor, from any country other than that wherein the book was first published. A copy must be delivered at Stationers' Hall for the library of the British Museum. Orders of Council, which may be revoked, may specify different periods for different foreign countries, and for different classes of works, but only where reciprocal protection is secured.

A receipt for the purchase-money of an assignment of the copyright in New York, and the date on the title-page, (as required by the American law,) is no conclusive evidence of the publication. The author or proprietor of copyright, if he has no residence in England, may enter at Stationers' Hall the address of his publisher. When an entry has been improperly made, the Court will grant a rule to "vary or expunge," but it will not expunge an entry of proprietorship without distinct evidence that it is false; neither will it amend without proof of corrections: *Lover* v. *Davidson; Cocks* v. *Davidson.* Where the defendant sought to have three entries of proprietorship in some music expunged, on the belief, which could not then be rebutted that they were not original, in order to prevent the entries being used by the plaintiff as *primâ facie* evidence in a suit pending, Lord Campbell said, that the legislature never intended that there should be a final decision on the question of property on affidavit; and as the Court were not prepared to expunge the entries, the rule was ordered to be enlarged until the trial of the issue to determine the copyright, and the entries not to be used as evidence of proprietorship. This course was adopted, but by consent, in *Chapell* v. *Purday.* Here the plaintiff was registered as the owner of the copyright in the opera of "Fra Diavolo," which the defendant, as a person "aggrieved" within the meaning of the Act, disputed, although himself claiming no title in the copyright. When an entry is once expunged from the books at Stationers' Hall, it cannot be again inserted. The Court, therefore, will guard themselves against, by an *ex post facto* law, giving to one party to a suit already commenced, a great advantage over his adversary.

Section 19 enacts, "That neither the author of any book, nor the author or composer of any dramatic piece or musical composition, &c., which shall, after the passing of this Act, be first published out of her Majesty's dominions, shall have any copyright therein respectively, or any exclusive right to the public representation or performance thereof, otherwise than such (if any) as he may become entitled to under this Act."

The first publication by representation of a play by a British subject in America, a country with which there is no convention of reciprocity in copyright, comes within the operation of this clause. The plaintiff, in *Boucicault* v. *Delafield*, it was proved, had first published in the United States, by representation, a drama called "The Colleen Bawn." This drama was afterwards produced at the Adelphi Theatre, London, the copyright duly registered at Stationers' Hall, and the piece licenced by the Lord Chamberlain. So far the preliminary arrangements for publication of native copyright were complete; but the fact of previous publication

abroad, rendered void the provisions of the British Copyright Acts. The publication, therefore, came within the limits of the 5th, 14th, and 19th sections of the International Copyright Act, 7 Vict. c. 12. It was contended that this Act could not annihilate the privileges enjoyed by British subjects under the former Acts. That the word "author" must mean an author in a country affected by the Act, and that the simple performance of a piece in MS. abroad was not contemplated by the term "publication." In delivering judgment, Vice-Chancellor Sir W. Page Wood said—"If any author chose to deprive this country of the benefit of the first publication of his work, and published it in a country which had not the benefit of an international treaty, then this country had nothing more to say to him. Mr. Boucicault, by first publishing his play in New York, rather than London, must be taken to have elected, and he was thereby excluded from all advantage of publishing in this country. There was nothing to justify him in restricting this provision, or in saying that it applied to a foreigner, and not to a British subject. The object of the legislature was to secure to this country the benefit of first publication; and, when it extended the like privileges to works first published in another country, it did so upon the condition that reciprocity should be afforded by that other country. Therefore the plaintiff's contest failed;" subsequently an order of inquiry as to damages was granted.

The Act of 15 Vict. c. 12, to enable her Majesty to carry into effect a convention with France on the subject of copyright, and to extend and explain the previous international copyright Acts, empowers her Majesty, by Order in Council, to direct that authors of books published in foreign countries, and "of dramatic pieces which are, after a future time to be specified in such Order, first publicly represented in any foreign country, to be named in such Order, their executors, administrators, and assigns, shall, subject to the provisions hereinafter mentioned or referred to, be empowered to prevent the representation in the British dominions, of any translation of such dramatic pieces not authorized by them, for such time as may be specified in such order, not extending beyond the expiration of five years from the time at which the authorized translations of such dramatic pieces hereinafter mentioned are first published or publicly represented," (sect. 4;) and the same is subject to the remedies of the literary and dramatic copyright Acts. But "nothing therein contained shall be so construed as to prevent fair imitations or adaptations to the English stage, of any dramatic piece or musical composition published in any foreign country." (sect. 6.) But no author is entitled to the benefit of the act without complying with the following requisitions:—

1. The original work from which the translation is to be made must be registered, and a copy thereof deposited in the United Kingdom, in the manner required for original works by the said International Copyright Act, within three calendar months of its first publication in the foreign country.

2. The author must notify on the title-page of the original work, or, if it is published in parts, on the title-page of the first part; or

if there is no title-page, on some conspicuous part of the work, that it is his intention to reserve the right of translating it.

3. The translation sanctioned by the author, or a part thereof, must be published either in the country mentioned in the Order in Council, by virtue of which it is to be protected, or in the British dominions, not later than one year after the registration and deposit in the United Kingdom of the original work; and the whole of such translation must be published within three years of such registration and deposit.

4. Such translation must be registered, and a copy thereof deposited in the United Kingdom, within a time to be mentioned in that behalf in the Order by which it is protected, and in the manner provided by the said International Copyright Act for the registration and deposit of original works.

5. In the case of books published in parts, each part of the original work must be registered and deposited in this country, in the manner required by the said International Copyright Act, within three months after the first publication thereof in the foreign country.

6. In the case of dramatic pieces, the translation sanctioned by the author must be published within three calendar months of the registration of the original work.

7. Copies of any books, affected by the Act or Order in Council, printed in any foreign country, except that in which such work was first published, and all unauthorized translations of any book or dramatic piece, the publication or public representation in the British dominions of translations thereof not authorized by the Act, are absolutely prohibited to be imported, except by or with the consent of the registered proprietor of the copyright of such work, or his agent, in writing. The remedial provisions of the Copyright Act as to protection apply to this Act.

The reciprocal convention with France, to which the Act of 15 Vict. c. 12 is auxiliary, stipulates, in conformity therewith, the conditions of copyright between the two countries.

The Customs duties on books and musical works originally produced in the United Kingdom, and republished in France, are £2 10s. per cwt., and on works not originally produced in the United Kingdom, 15s. per cwt., under the Customs Act, 15 Vict. c. 12, s. 13.

Reciprocal conventions to the same effect have been concluded with Prussia, to which Brunswick, Saxony, the Thuringian Union, and Anhalt, gave their adhesion. Also with Hanover, Oldenburg, Hanse Towns, Belgium, and Spain.

REGULATION OF THEATRES.

The early Acts of Parliament for regulating playhouses were I Eliz. c. 2, s. 29, to impose a penalty of 3s. 6d. for acting on a Sunday: the 39 Eliz. c. 4, to punish all players as rogues and vagabonds who did not belong to the company of a baron, or some other honourable personage of high degree : the 3 James I. c. 21, to restrain the abuses of players, and to inflict a penalty of a hundred marks on any person representing a play derogatory to the Book of Common Prayer : the 1 Charles I. c. 1, to impose a fine of £10 for profane jesting : the 23 Charles I. c. 93, to empower the Lord Mayor, &c., to enter houses where plays were being acted, and take into custody and commit all performers found therein to the sessions for trial ; and cap. 106 of the same year, to prescribe the punishment of publicly whipping all strolling players in the market-place of any town, to demolish the seats and benches of any playhouse, and fine the spectators 5s. each, to be forfeited to the churchwardens of the poor : the 12 Anne, s. 2, c. 23, for the consolidation of the vagrant laws: the 10 Geo. II. c. 19, prohibiting stage-players from acting within five miles of either university of Oxford or Cambridge, and cap. 28 of the same year, (commonly called Sir Robert Walpole's Act,) for the more effectual punishment of persons acting who had not a settlement, or who acted without authority from the Lord Chamberlain.

These restrictions on the licence of play-acting led, during the first half of the reign of King George the Third, to the creation of several patents by Acts of Parliament for the establishment of theatres in some of the principal towns. Thus, sec. 19 of the 7 Geo. III. c. 27, sanctioned the establishment of a theatre in Edinburgh ; and a few years later, powers were obtained for the erection of theatres at Bath, Liverpool, Manchester, Chester, Bristol, Margate, and Newcastle-on-Tyne.

The first theatrical licence was granted in 1574 to James Burbage, and others, to act plays at the Globe, Bankside, or in any part of England. Royal licences to companies of players were freely dispensed up to 1737, and in some instances patents were granted sanctioning a perpetual performance of stage plays, excepting during the interval between 1633 and 1660, when, in consequence of the opposition of the Puritans, play-acting was suspended. The patents to the two great theatres, Drury Lane and Covent Garden, are in force at the present time, namely, Killigrew's and D'Avenant's. These patents were both issued in the fourteenth year of the reign of King Charles II. (1662), D'Avenant's company being styled the Servants of the Duke of York, and Killigrew's those of His Majesty. In order better

to preserve amity and correspondence betwixt the said companies, and that one should not encroach on the other, it was ordered that any person leaving either company should not be engaged by the other without consent in writing of his late employer. The patents also strictly enjoined that no play should contain any passages offensive to piety and good manners, and, in the words of the document itself, "do likewise permit and give leave that all the women's parts, to be acted in either of the said two companies for the time to come, may be performed by women, so long as these recreations may by such reformation be esteemed not only harmless delight, but useful and instructive representations of human life." These two companies were united in 1684, and continued so till 1694.

The popish sacred comedies or mysteries of ancient times, appear to have been solely under the control of the ecclesiastical law, or, at least, the bishops. At the Reformation, and for some time after, plays and interludes were very commonly performed in churches and chapels. It is needless to add that the 88th canon of the Church forbids plays, feasts, banquets, &c., to be held in the church or churchyards, as of yore.

The 28 Geo. III. c. 30 (1788), may be termed the first public statute which gave to actors the indiscriminate right to follow their calling, unfettered of the restrictions of former Acts. This Act enabled justices of the peace to license theatrical representations occasionally, subject to the provisions contained therein, all of which have been repealed or embodied in the existing Act for the regulation of theatres, namely, the 6 and 7 Vict. c. 68 (see Appendix C.), which was passed on the 22nd of August, 1843.

The Duke of Gloucester, afterwards Richard III., is believed to have been the first prince who retained near his person a company of players. In 1572, when Shakspeare was only eight years old, the "poor players" first enjoyed legal recognition, in so far as licences were granted them to play as retainers in the household of noblemen. For many years during the operation of the old Act, actors were regarded as a persecuted class of men. This opinion was even shared in by justices of the peace, for in 1789 we read of three being fined £100 each for liberating actors who had been committed for fourteen days as rogues and vagabonds, for acting plays, &c., at the Royalty Theatre. Scarcely any provision was made for actors within the narrow limits of the Act of George III.; and they suffered the obloquy of being designated rogues and vagabonds by Act of Parliament if detected acting in an unlicenced house, a practice openly recognized and connived at years before that statute was repealed.

It is difficult to say at what exact date the drama was first introduced into Ireland, but from an early period, the diversion of stage plays prevailed. An Act of Parliament, passed at Dublin in the year 1635-6, contains the following reference to strolling players: "All fencers, beare-wards, common players of enter-ludes, and minstrels, wandring abroad, &c., shall be adjudged, and deemed

roagues, vagabonds, and sturdy beggars, and shall sustain such punishments as are appointed by a statute made 33 of King Henry the Eighth." There does not appear to have been any subsequent legislation on the subject of licencing either theatres or plays, with the exception, perhaps, of the Irish Act, 26 Geo. III. c. 57, which enacts that no theatre shall be established in the city or county of Dublin, except under the privilege of letters patent, to be granted by Her Majesty, for a term not exceeding twenty-one years; and any person causing plays, &c., to be performed without such patent, is liable to a penalty of £300.

The superintendence of theatrical entertainments in this country was first vested in the Master of the Revels, an officer appointed under the Crown, but who sometimes took his instructions from the Privy Council. The origin of the office of Master of the Revels may be traced as far back as 1545. The authority of the Lord Chamberlain, in matters connected with the stage, appears to have been first exercised about the year 1624; but we have no Act of Parliament defining his duties till the passing of the 10 Geo. II. c. 28. The necessity which gave rise to the passing of that Act is believed to have been occasioned by the threatened representation of a piece called the "Golden Rump," or, as others say, Fielding's "Pasquin," both of which contained much satire on political power, and was supposed to be a contrivance by certain parties to produce an impression on the mind of the Minister of the day, as to the inconvenience of allowing an unrestrained state of the drama.

The 6 and 7 Vict. c. 68 (see Appendix C.), now in operation, authorizes the granting of licences by the Lord Chamberlain for the performance of stage plays within the metropolis, and at Windsor and Brighton (sec. 3), and the examination of all plays before representation on the stage throughout Great Britain and the Channel Islands (sect. 12) The jurisdiction of the justices of the peace relative to licencing, &c., is extended (sec. 5), and provisions are made by other sections for carrying into effect the object of the Act.

The proper definition of the wording of sect. 2 of the Act, was settled in the case of *Davy* v. *Douglas*. It was there held that a booth theatre, which may be taken to pieces and carried from place to place for the purpose of theatrical performances, is not a "house or any other place of public resort for the public performance of stage plays." The manager of a company of strolling players erected a booth at a fair at Peterborough, for the performance of stage plays and other entertainments, without being duly licenced. On information before the justices the charge was dismissed, and a case sent up to the Superior Courts, grounded on the wording of sects. 2 and 11, namely, whether a booth was "a house or other place of public resort," and the performance therein "acting for hire" in any "place." On appeal, the Court decided that a tent, which was not of a permanent character, could not be considered a "house," and the expression a "place of public resort," was too vague and indefinite, and could have no other construction than that of the nature of those places specified in the Act. As there was

no proof of money having been taken at the doors, a conviction could not be sustained under sect. 11 for "acting for hire" in any "place." This judgment of the Court decided the question that a booth was not a house; but the failure of the appeal was evidently attributable to the want of testimony to bear out the fact of "acting for hire." It is doubtful, therefore, whether the magistrates have the power to grant a licence to a booth. The ruling in the above case would infer not. At fairs or other customary meetings, booths are exempt from licence under the provisions of sect. 23.

In *Fredericks* v. *Payne*, the question again occurred, whether a booth could be called a "place" within the meaning of sect 11. It was contended that the term "place" should have some limit, and should apply only to buildings fixed and permanent, and not to a mere temporary structure, or drawing-room performances would fall under the Act. Baron Bramwell in delivering judgment said, "The provisions of the 2nd sect. is 'an express prohibition' against *keeping* such a place; and, in addition, a penalty is imposed on the person who *keeps* it. But that alone would not be sufficient. If the statute had stopped there, any person might act at a place not so *kept*, without becoming liable to any penalty. Thus a band of strolling players, acting in barns and similar places, not *kept* for the purpose, might cause the mischief which it was the object of the legislature to provide against. But the 11th section prohibits the acting for hire in all places except those that are licenced, whether they be *kept* for the public performance of stage plays or not, and so forms a necessary completion of the 2nd section. This view is also confirmed by the proviso in the 23rd section, 'that nothing herein contained,' &c. It seems a legitimate inference, that booths and shows in a fair, if not excepted by the terms of that proviso, are within the scope of the 11th section." With reference to the point of acting in private houses, his lordship said it was unnecessary to offer an opinion; but he was by no means certain that the parties acting in, or causing the performance, would be liable. His lordship said, "The 16th section points out in what cases an actor shall be deemed to be acting for hire; and would seem to show that the hire, which the Act contemplates as a necessary constituent of the offence, must be a hire received from the spectators."

Private performances, and performances for public charitable purposes in unlicenced houses, though no special provision for the like is contained in the Act, are considered to be exempt from its operation.

According to sects. 3, 4, 5, and 6 of the Act, all theatres must be licenced either by the Lord Chamberlain or the justices of the peace, as the law directs, and the maximum amount of the fees provided paid monthly during the time the theatre is licenced to be kept open. The power of licencing is not restricted to theatres. Two sureties of £50 each, and £300 on the part of managers of theatres, and two in £50 each and £200 on the part of managers of saloons, is required to be given in bond in due form for the proper performance of the conditions of the licence (see Appendix E). A licence

will be granted only to the proprietor or responsible manager. The Lord Chamberlain, in 1854, refused a licence to Mr. Lumley for Her Majesty's Theatre, until it was shown who was the rightful claimant to the property. The Lord Chamberlain or the magistrates, as they think fit, may grant licences for any term not exceeding twelve months. The practice is to appoint one licencing day in the year, and to renew the licences on that day when required. The Lord Chamberlain's day for the renewal of licences is in the latter end of September, generally the 28th. The licence, it is presumed, sanctions music and dancing.

For the purpose of procuring a licence for a new theatre within the jurisdiction of the Lord Chamberlain, application, first stating the circumstances, should be made to his lordship. The consent of the rector or incumbent of the parish or district, with one or both churchwardens, and the consent of parishioners, expressed in vestry by signature, to the number of three-fourths should then be obtained. This document must lie in the vestry for signature for one calendar month. Other memorials in favour of the project may be tendered.

The application to a bench of magistrates for a licence to a theatre, may be based on motives of private speculation, or the requirements of the neighbourhood for dramatic entertainments. In either case the applicant should be prepared to show some necessity for the project. The support of the principal ratepayers, by memorial or otherwise, is the best criterion of the requirements of the inhabitants of the district. In order to make out a case, the most reliable facts and statistics, social and recreative, should be urged on the justices. These propositions are generally met by counter memorials or objections from the clergy, dissenters as a body, and other persons interested in the opposition, among whom sometimes are the managers of existing theatres, who generally deny the want of additional theatrical amusement to be greater than they themselves can supply. It is not usual to examine witnesses on either side, but, if the Court thinks proper, evidence may be adduced, (see forms D and E, Appendix.) It was the opinion of Mr. Macready and the late Justice Talfourd, that the power of the magistrates under the Act was compulsory, and not discretionary; a mere controlling power in the case of mismanagement or misconduct.

The select committee of the House of Commons on public-houses, which sat in 1853-4, recommended, with reference to the granting of theatrical licences, "That it should be open to all persons to obtain such licence (for public theatrical or musical performances, pictorial or other representation or exhibition) from the Lord Chamberlain or other competent authority, on payment of a sum not exceeding £5 per annum, and on giving bond and sureties for the observance of the law and conditions of the licence."

If a person enters into an agreement to open an unlicenced theatre, he is not bound to fulfil his contract: *Levy* v. *Yates*. Neither can a partnership exist to conduct an unlicenced theatre, if the parties are aware at the time of the illegality of the transaction; that being sufficient, in point of law, to make the contract

void. "What is done," said Lord Ellenborough, "in contravention of the provisions of an Act of Parliament, cannot be made the subject-matter of an action:" *Ewing* v. *Osbaldiston*. So the participant in a theatrical concern could not recover money he had paid to another in the conduct of an unlicenced theatre: *De Begnis* v. *Armitstead*. But an agreement to perform at an unlicenced theatre, will stand good against the managers. In *Gallini* v. *Laborie*, Lord Kenyon said, "the performer being ready to execute the agreement on his part, he ought not to suffer because the manager did not obtain a licence, which it was his business to have procured."

The increase in dramatic and musical entertainments, in which the *dramatis personæ* consist of two persons only, has induced the Lord Chamberlain and the magistrates to grant theatrical licences to music halls and other places, in order to legalize their performance, notwithstanding the objection often urged, that dramatic licences should apply only to properly constructed theatres, built expressly, with all the accessories, for dramatic representations. The licence, it is presumed, if granted at all, must be unconditional, or subject only to the restrictions of the Act, which empowers the justices to make rules for the securing of order and decency, &c., for a breach of which the manager may be fined, and his licence placed in jeopardy. But conditional licences are frequently granted, upon the understanding that the performances must be confined to the character specified in the application, and in no way to interfere with more important local arrangements, such, for instance, as in the case of Birmingham, when public meetings may be required to be held in the Music Hall, a place licenced for dramatic entertainments, but which unconditionally the proprietor or lessee for the time may possibly decline to grant the use of. Also to prevent performers of light musical entertainments from extending the privilege under the licence to comedy or melodrama. The Lord Chamberlain or the magistrates reserve the power of ordering alterations to be made in any building licenced for theatrical performances, to secure the convenience of the audience, and to arrange for proper means of passing in and out. This salutary practice was begun some few years since, under the censorship of the Marquis of Breadalbane. Periodical visits to the theatres are now made annually, for the purpose of promoting public security.

By sect. 7 a licence can only be granted to the actual and responsible manager, who must provide sureties for the due observance of the rules. If the rules are broken, sects. 8 and 9 empower the Lord Chamberlain or the justices of the peace to suspend the licence; the former acting alone or by his examiner, as censor, and the latter on evidence brought before them. The rules issued with the licence by the justices, are generally as follow:—

1. The theatre shall be closed every Sunday, Christmas day, Good Friday, and days appointed for a public fast and thanksgiving. 2. The theatre shall be closed every Saturday night at the hour of half-past eleven. 3. Police constables, when dressed in uniform, or other constables when not dressed, if known as such to

manager or his servants, shall be permitted to have free ingress to the theatre at all times during the time of public performance. 4. The manager shall, to the best of his ability, maintain and keep good order and decent behaviour in the theatre during the hours of public performance. 5. For every breach of the above rules, the manager shall forfeit and pay a penalty not exceeding £5. And such rules to be signed with the licence.

A licence for metropolitan theatres, from the Lord Chamberlain, has no rules and regulations attached to it. This is left to the police authorities. The Lord Chamberlain may suppress the opening of a theatre as a casino: *Trustees of Whitechapel* v. *Levy*.

Till very recently, managers of the metropolitan theatres were suffering from an anomaly from which theatres under the control of the magistrates were exempt; viz., that of closing during Passion week. The Lord Chamberlain, therefore, in order to assimilate the regulations of London and provincial theatres, sanctioned the opening of the metropolitan theatres during the holy week, Good Friday excepted. This permission was communicated to the managers at the annual court held at St. James's Palace, on Monday the 30th September, 1861, for the purpose of granting licences to theatres, and was the result of memorials and deputations to the Lord Chamberlain, by the managers of theatres and others concerned in the abolition of the monopoly. Notwithstanding the active measures taken by the opponents to the change, in memorializing the Archbishop of Canterbury to intercede for, and the Lord Chamberlain to reverse the order, they have, up to yet, been ineffectual, the Lord Chamberlain being of opinion that the time has arrived for such an anomaly to cease.

The Act of 5 and 6 Will. IV. c. 39, s. 7, authorized the sale of beer, spirits, wine, &c., in theatres, but the clause was, in 1835, suspended by directions from the Lords of the Treasury. It has, however, within the last few years been rescinded, and most of the theatres now have a licence to sell excisable liquors. The section provides that the proprietor of a theatre shall not be required to produce the usual certificate from the magistrates for a licence to sell spirits.

A theatre, which was formerly a saloon, and part of one set of premises on which a tavern was licenced, is exempt from providing a double licence in consequence of the alteration, although a separate entrance was made as a condition of granting the theatrical licence. The licence does not alter the state of things, and the theatre may be regarded only as an accessory to the trade of a publican: *Reg.* v. *Conquest*.

Theatres, being subject to police regulations, may become local nuisances, and the proprietors may be summoned before a magistrate, or indicted at the sessions; but breaches of this kind in the present day would probably be met by the withdrawal of the licence. In the early days of the drama, the erection of playhouses was often the subject of legal proceedings. At that period the common law courts exercised the right of issuing writs of prohibition of a nuisance; but in the case of *Bretterton and others*, who

erected a playhouse in Little Lincoln's Inn Fields, very much to the annoyance of the people in the neighbourhood, by whom it was deemed a common nuisance, the question was, whether the court could grant a prohibitory writ to suppress a licenced playhouse which had become a public nuisance, or whether it should be left to the common mode of prosecution by indictment. The latter course only appears to have been adopted since. But it seems to be the better opinion, that playhouses having been originally instituted with the laudable design of recommending virtue to the imitation of the people, and exposing vice and folly, are not often nuisances in their own nature, but may only become so by accident; as where they draw together such vast numbers of vehicles and persons, &c., as prove generally inconvenient to the places adjacent. An exception may be taken where the nature of the performance is repulsive to the feelings, or personally dangerous; such, for instance, as the exhibition of dangerous animals loose upon the stage, or in any other way perverting their original institution by placing in peril the lives of the audience.

Creating a disturbance in a theatre during the performances on the stage, alarming the audience to the danger of their lives, or other disorderly conduct, are offences under the Police Act, and may be dealt with by [illegible] or imprisonment, with recognizances to keep the peace. [illegible]tously and tumultuously assembling together, to the disturb[illegible]ce of the public peace, is an offence punishable under the Malicious Injuries Act, 24 and 25 Vict. c. 37. In order to maintain an indictment for this, it must be proved that the number of three, at least, assembled together in a manner calculated, either from their number, threats, or gestures, &c., to inspire terror. In former times, when managers and actors were more subject to the caprices of the audience, riots at theatres were of frequent occurrence. The last of the O. P. riots lasted for sixty-seven nights, and was then only quelled by a compromise, verifying the doggerel rhymes which were at the time placarded about by the mob, of which the following is a sample:—

> "Mr. Kemble, lower your prices; for no evasion
> Will suit John Bull on this occasion."

As late as 1810, several persons were found guilty of exciting disturbances in the Liverpool theatre, and severally sentenced from two to twelve months' imprisonment.

Although it is the province of the stage to lash the vices and ridicule the follies of persons in all ranks of life, it has sometimes been attended with serious results. The opposition, some years ago, of the livery servants in Edinburgh to the representation of the farce of "High Life Below Stairs," and the journeymen tailors of London to a burlesque called the "Quadrupeds," though happily terminating without personal injury, are instances of what a packed audience are capable of doing, when their calling is made the subject of a wholesale attack of ridicule.

The audience at a theatre have a right to express their disapprobation of any performance or performer exciting their displeasure

at the moment, by means of hissing or other show of disapproval but if a number of persons go thither with an intention to make a disturbance, and render the performance inaudible, though they offer no actual violence to the house, or any person there, yet they are in point of law guilty of a riot. In the time of the O. P. or N. P. B. riots in 1809 (meaning Old Prices and No Private Boxes), the plaintiff, in the case of *Clifford* v. *Brandon*, went with divers others to the pit of the Covent Garden Theatre, which had been lately rebuilt by a company under a patent of Charles II., and by means of all sorts of noises rendered the performance inaudible. The prices of admission had been raised from the opening, and a number of pit-seats and boxes had been privately let to individuals for the season. The ruling of Lord Mansfield was clear and distinct as to the illegality of the obstruction, although the plaintiff got a verdict, in consequence of the jury being unable to agree that he was *instigating* a riot by having a card, with "O. P." marked upon it, stuck in his hat, and that there was no riot when the arrest was made, he being in the act of leaving the theatre, and subsequent to the commission of the offence, which made the apprehension illegal without a warrant. The learned judge remarked, "The audience have certainly a right to express, by applause or hisses, the sensations which naturally present themselves at the moment; and nobody has ever hindered or questioned the exercise of that right. But if any body of men were to go to a theatre with the settled intention of hissing an actor, or even of damning a piece, there can be no doubt that such a deliberate and preconcerted scheme would amount to a conspiracy, and that the persons concerned in it might be brought to punishment."

Macklin, the famous comedian, once indicted several persons for a conspiracy to ruin him in his profession. They were tried before Lord Mansfield, and it being proved that they entered into a compact to hiss him as often as he appeared on the stage, they were found guilty. The riot took place in consequence of the absence of a performer, and was created by some members of the once celebrated "Calves' Head Club." Several persons were injured, and Macklin himself very narrowly escaped. It has been generally stated that the affair was compromised on payment of £2000 compensation; but this seems to be erroneous, as it not only appears from Dodsley's "Annual Register," and the London "Chronicle" of May 11, 1775, that no sentence was recorded against the defendants, they having consented to pay Macklin's law expenses, and purchase £200 worth of tickets for Macklin's and his daughter's benefit.

These precedents were quoted and acknowledged by the judges in *Gregory* v. *the Duke of Brunswick and others*. The plaintiff in that case was formerly editor of the "Satirist," and had, for having published some defamatory libels on certain individuals, brought himself into great disrepute with a portion of the public. He was successively followed from theatre to theatre by a party of men who, it was said, were engaged to drive him off the stage. Some persons were apprehended and summarily dealt with by the magis-

trates; but in the action brought against the defendants as the instigators of the attack for conspiracy, by making hideous noises &c., to drive him off the stage, he failed to produce evidence of a preconcerted scheme between the parties, and was accordingly nonsuited. The trial, however, resulted in the confirmation of the rule laid down in *Clifford* v. *Brandon*, that a person has a right to express his free and unbiassed opinion of a performer, but not by a preconcerted plan to destroy his reputation.

In such a case, the defendants cannot, under the general issue, give in evidence libels published by the plaintiff, with a view of showing that the plaintiff was hissed on account of those libels, and not by reason of any conspiracy of the defendants.

If a person be told on entering a theatre that there is room, when in fact there is not, his proper course is to leave the theatre, and demand the return of his money. He is not justified in getting into any other part of the theatre, for the use of which he has not expressly paid, or if he does he is a trespasser, and the proprietor or his servants may remove him, using no more force than is necessary, and they cannot be punished for such an act. If, however, he commit a breach of the peace, he may be arrested, *Lewis* v. *Arnold*.

Public criticism on the performance at a theatre may be libellous. if done unfairly, and with malice or view to injure or prejudice the proprietor in the eyes of the public: *Dibdin* v. *Swan*.

Sect. 10 provides that no licence shall be in force within the precincts of the Universities of Oxford and Cambridge, or within fourteen miles thereof, without the consent of the Chancellors or Vice-Chancellors respectively. The rules to be subject to their approval, and, in the event of a breach, it shall be lawful for them to annul the licence. At Oxford, entertainments of the stage, and the like, are governed only by the present Act. At Cambridge, extra public performances are regulated by the local Act of the 19 and 20 Vict. c. 17, entitled "The Cambridge Award Act, 1856," Sect. 16 of which enacts that "no occasional public exhibition or performance, whether strictly theatrical or not, other than performances in theatres which are regulated by the Act 6 and 7 Vict. c. 68, shall take place within the borough (except during the period of *Midsummer* fair, or in the long Vacation), unless with the consent in writing of the vice-chancellor and the mayor; and every person who shall offend against this enactment shall be liable to forfeit a sum not exceeding £20, recoverable in like manner as penalties imposed by the said Act."

The justices of the peace have the power, under sect. 11, of convicting any person in a penalty of not exceeding £10, for causing plays to be acted in an unlicensed house, and, as evidence of acting for hire, sect. 16 defines that when money or reward shall be taken directly or indirectly, or the purchase of any article made the condition for admission into any theatre, &c., every actor therein shall be deemed acting for hire, and subject to the penalties of the Act. By sect. 17, the onus of proof of licence, if the theatre is shown to have been used for public

performances, lies on the party accused. This clause met the objections raised by the Bow Street Magistrates, Mr. Halls and Sir Richard Birnie, in 1830, "that it was incumbent on the informers to show that the defendant had not licence or patent from the Crown," * but which was subsequently over-ruled by Lord Tenterden in the case of *Parsons* v. *Chapman*. The defendant had not only committed a breach of the old Act for regulating theatrical performances which was a very common occurrence at that period and acquiesced in by nearly every body up to the passing of the present Act, but had infringed the copyright of other persons' productions by representing them on the stage under different titles. Thus the opera of "Guy Mannering" was played under the title of the "Gipsy's Prophecy," and Morton's comedy of the "Cure for the Heart-ache," under that of "Father and Son." However this formed no part of the question of the illegal performance.

The section last referred to supersedes the expedients to which the unlicensed votaries of the histrionic art formerly had recourse, in order to evade the penalties of the law. An instance of the kind occurred in which the Kemble family got up a performance at Wolverhampton, by the sale of tooth powder in packages, with which was presented a ticket of admission. In order to convict under the Act, it is incumbent on the prosecution to show who is or who has the appearance of being the proprietor of the premises. Proof that a person attended rehearsals in an unlicensed theatre, and gave directions in connexion with engaging and paying performers, is sufficient to warrant the justices drawing the conclusion that he caused the performances; and if he did that, it is not material whether he did so as the agent of others or not: *Rex* v. *Glossop*. Or if shown that he had taken an active part in the management of the concern, he may be presumed to be the proprietor, notwithstanding that parts of the temporary structure had the name of some other person painted thereon: *Reg.* v. *Fredericks*. From the fact of a person being seen to take money at the doors, it may be presumed that he is the proprietor, if he cannot show otherwise. But where a person is only known by general repute to be the proprietor, in the absence of evidence to connect him with the premises, the justices will not convict.

A description at length of as much of the performance as can be recollected, the nature of the stage business, the use of scenery, the number of performers, the production of playbills, identical with the proceedings, and, if necessary, the testimony of experts, that the entertainment in question is in their opinion a stage-play, is required to prove an offence. A dramatic performance, as construed by the judges, does not depend upon the number of the performers, the quality of the entertainment, or stage accessories. It was held by Lord Kenyon, under the old Act, that dancing was an entertainment of the stage, (*Gallini* v. *Laborie*,) and that tumbling was not, (*Rex* v. *Handy*,) it having been introduced

* See Parliamentary Report on Dramatic Literature, 1832.

subsequent to the passing of the Act. Taking the interpretation clause of that Act (28 Geo. III. c. 30), and the one belonging to the 6 and 7 Vict. c. 68—the two sections must be construed alike. There is no record of this decision having been overruled. And more recently in Scotland, in the case of *Alexander* v. *Anderson*, it was decided, that wherever there is scenic representations and dramatic effect of whatever kind, that is an "entertainment of the stage," in the sense of the statute. The Lord Justice Clerk, in delivering judgment on that case, thought that Lord Kenyon's first opinion, that even such performances as "tumbling" was an entertainment of the stage, was the better opinion. In giving a definition of what constituted an entertainment of the stage, he said—"Now, what is the stage? It refers to the exhibitions of acting, or representations of fictitious scenes, by the performance of parts. There fencing alone is not representation; but, if parties are advertised to fence, or do fence, dressed up in characters, though no name is given to suchcharacters dressed up in fantastic dresses, so as to make a scene by the aid of the dresses, then there is scenic effect superadded to the fencing. As to tumbling, I should wish not to be understood as concurring in the opinions that it may not, by possibility, be brought within scenic representation or scenic effect, of however low a character. But, wherever there is scenic representation or dramatic effect of whatever kind, I apprehend that is an entertainment of the stage." The Margate case (*Thorne* v. *St. Clair*), in which it was proved that a stage was erected in a Bazaar, and two persons representing characters in costume, appeared before the audience and held dialogues, these being varied by soliloquies and singing, the magistrates dismissed the case, but the Court of Queen's Bench reversed the decision. The proprietor of the Canterbury Hall was compelled to bow to this decision. The entertainment, in his case, was called a burlesque pantomime, and entitled the "Enchanted Hash." It could only in some parts be slightly distinguished from an ordinary pantomime, and, with the exception of scenery, the dresses, tricks, and properties were similar to those used in theatres.

In the present age of "Penny Gaffs," actors may be doubly liable for performing obscene plays, though such cases seldom or never come before the Courts. In one or two instances the authority of the Lord Chamberlain has been sufficient to suppress what was thought to be a too free translation or interpretation of French pieces. Palpable representations of living persons, when the object is to hold such persons up to scorn and ridicule, may be made the subject of libel, civil or criminal. A colourable representation of living or deceased persons, when the make-up and the dialogue unmistakably point to certain individuals, may be instantly suppressed. The Lord Chamberlain, in his authority as censor over all entertainments of the stage, assumes not only the authority to licence plays, but to order their withdrawal. This has been done in several instances of late years. The title of a piece called "Lola Montes; or, the Countess for an Hour," for the above reasons was changed but allowed to be repro-

duced with alterations under the title of "Pas de Fascination." Stage plays have been prohibited at the suit of foreign ambassadors. It is a misdemeanour to prejudge a criminal case, by representing in a theatre a man in the act of committing an offence. In 1823, John Thurtell was committed to take his trial for the murder of Mr. Weare. The proprietor of the Surrey Theatre represented the supposed facts, as they appeared in the newspapers, on the stage, in such a manner as to lead the audience to suppose that John Thurtell was being represented, of which there could be no doubt, as the scenes of Probert's cottage, the ruins of the fire in Watling Street, a gambling house, and Gills Hill house, with a horse and the identical gig which carried the murderer down to the scene of the murder, were announced and exhibited. Upon these facts, the Court of Queen's Bench granted a criminal information against the proprietor. But this was at a period when the law was set at defiance, or rather, as the Surrey Theatre was out of the jurisdiction of the Lord Chamberlain; under the old law he had not the authority to licence the theatre, though the play, by the statute, should have passed through his hands. A similar exhibition in 1849, entitled "Rush; or, the Stanfield Hall murder," at Stockton-on-Tees, was suppressed by the authorities.

Although the power of licencing the metropolitan theatres is vested in the Lord Chamberlain, there are few instances of proceedings taken by him to suppress unlicenced houses. The Act only gives him the same power to prosecute for a penalty as it does to a common informer; but the law, if put in force at all, is generally done by the managers of theatres or the police.

Under section 36 of the Metropolitan Police Act (2 and 3 Vict. c. 47), power is given to the police to "enter into any house or room, kept or used within the said district for stage plays or dramatic entertainments, into which admission is obtained by payment of money, and which is not a licenced theatre, at any time when the same shall be open for the reception of persons resorting thereto, and to take into custody all persons who shall be found therein without lawful excuse; and every person keeping, using, or knowingly letting a house or other tenement, for the purpose of being used as an unlicenced theatre, shall be liable to a penalty of not more than £20, or, in the discretion of the magistrate, may be committed to the House of Correction, with or without hard labour, for a time not more than two calendar months; and every person performing, or being therein without lawful excuse, shall be liable to a penalty of not more than 40s.; and a conviction under this Act for this offence, shall not exempt the owner, keeper, or manager of any such house, room, or tenement, from any penalty or penal consequences to which he might be liable for keeping a disorderly house, or for the nuisance thereby occasioned." The police have no legal authority to enter a theatre, duly licenced, more than any other house, without permission from the managers, who, for the sake of better

preserving order therein, allow them to pass free, or rather invite their attendance, or in conformity with the rules. The police in London report monthly to the commissioners, and if any irregularity occurs with respect to the management of any theatre, a report is made to the Lord Chamberlain.

A caravan theatre, such as is used at fairs, is not a tenement under the above section. This point has recently been decided on appeal in *Fredericks* v. *Howe*. The appellant had constructed a temporary theatre or booth at Barking, which consisted of two caravans placed together with boarded sides, covered over with canvas, and supported by poles driven into the ground around the outside; in dimensions about twenty yards long, by nine wide and eight high, and capable of accommodating 300 persons seated. The whole of the materials were portable, and could be taken to pieces and readjusted in a few hours. In this structure was found a company of strolling players dressed in character, giving a dramatic representation, to which admission was obtained on payment of threepence. It was contended that the caravan was a "house or other tenement" under the Police Act; but the Court held that a tenement meant something fixed or permanent, and not a structure of this kind, which, being absolutely moveable and portable, became a chattel, and might be distrained if found on land on which chattels would be liable to distress (see p. 32).

Sections 12 to 15 appoint the Lord Chamberlain censor over all entertainments of the stage. Every new production must first receive his sanction before it can be represented in public, no matter whether it be English or foreign, subject to the payment of a fee, by the manager, of £1 for a play under three acts, and £2 for a play containing three or more (see Form G, Appendix). Not only the language must be submitted to him, but the incidents and stage directions, which, in the case of pantomimes and such like productions, are very numerous. This has of late years been found necessary, in order to ascertain what interpretation is given to the dialogue. He has also the power to prohibit the performance of any play previously licenced if he thinks fit, as in the case of "Jack Sheppard," "Oliver Twist," "La Dame aux Camelias," "La Tour de Nesle," and some others, which, when represented, were supposed to impart to the audience a tendency more to demoralization than otherwise. Two plays were rejected which contained offensive allusions to the Roman Catholics, at the time when the excitement respecting Cardinal Wiseman was at its height. The duties of this branch of her Majesty's Household are performed by an officer called the Examiner of Plays, to whom is delegated the examination of all new plays, &c., previous to representation on the stage, subject of course to the approval of the Lord Chamberlain. His directions are to strike out all expressions of profaneness, lewdness, cursing, swearing, or other immorality; political, personal, or religious allusions, or any other matter likely to excite commotion among an audience, or a breach of the peace. He is also deputy for the Lord Chamberlain in the management of licencing theatres. The representation, therefore, of any thing which has

not been allowed by the Lord Chamberlain, is a heavy offence. Though that functionary is, by the Act, made responsible for the purity of the drama, he does not appear to exercise much supervision over the performances, in order to suppress that which is by law prohibited. It is certainly open to any one to lay an information; but it is difficult to conceive how the public are to distinguish between parts and passages which have been allowed or disallowed by the licenser. The manager of every theatre and saloon is required to send a bill of each evening's performance to the office of the Lord Chamberlain, in order that the latter may have an opportunity of ascertaining whether the plays performed have been previously licenced.

Sec. 20 gives the power of appeal to any person who may think himself aggrieved by an order of the justices, provides for the appropriation of the penalties, and limits the institution of proceedings to within six calendar months from the date of the offence. It is uncertain whether an appeal will lie against the granting of a licence to a theatre by the magistrates. An application was made in 1854 to the Court of Queen's Bench, for a rule for a mandamus to compel the Recorder of Birmingham to hear an appeal; but the application not having been made till after the expiration of the period of the licence, the Court declined to give their opinion on the construction of the statute. At the hearing before the Recorder it was contended that the appeal would not lie, and that, if it did, the parties appealing were not the parties "aggrieved," an objection which the Recorder held to be good, and granted a case for appeal. As to the question of grievance, it is doubtful whether the appellants in this case were immediately "aggrieved," or only consequentially so. The respondent had built a theatre, at considerable cost, in Birmingham, and the objection was made by the manager of another theatre in the same town. In a case analogous to this —that of *Reg.* v. *The Justices of Middlesex*—the Court held that the sessions have no power to entertain an appeal against the granting of a licence to sell liquors by the magistrates. The respondent had opened a public-house in opposition to the appellant. In order that the latter should come within the description of a party "aggrieved," the Court decided that he must be one who sustains an actual grievance, and not one who apprehends that, by some possibility, some contingency, which may or may not take effect, he may sustain a grievance.

The law in England, Ireland, and Scotland is conflicting on this point. In the days of the patent monopoly, when the minor theatres were beginning to represent the legitimate drama, it was found that the only means of suppressing the performances was solely by means of summary process, under the Act of George III., by a common informer. And in Ireland, in *Calcraft* v. *West*, where the plaintiff was proprietor of a patent theatre under an Act of the Irish parliament, which imposed a penalty of £300 on any one performing plays in that city without a patent, there it was thought that the plaintiff was not so consequentially aggrieved as to be in the position to recover. But in Scotland it is an esta-

blished point, "that every person is entitled to interdict an unlawful act which injures him in the execution of one that is lawful:" Lord Glenlee, in *Siddons* v. *Ryder*. Where the plaintiff alone was entitled, by Act of Parliament or patent, to perform any entertainments on the stage the Court gave protection by interdict: *Jackson* v. *Kemble*. And so in *Alexander* v. *Anderson*, where an interdict was granted at the instance of the lessee of the patent of a theatre, licenced by Act of Parliament, 43 Geo. III. c. 142, against the manager of an unlicenced theatre, from performing within the limits of the patent, all plays and other entertainments of the stage of any description whatever, whether the same had been licenced by the Lord Chamberlain or not.

In *Douglas* v. *Davy*, the appellant, having taken the unusual course of appealing against the acquittal of the respondent, it was contended that the discharge of the latter by the justices was a final relief, and that the law does not, in such cases, enable the Superior Courts to hear an appeal, and convict a person not before them; but the Court thought otherwise. Under sect. 20, any person aggrieved by an order of the justices may appeal to the Quarter Sessions; and the Summary Procedure Act (20 and 21 Vict. c. 43) extends that privilege to "either party," and to the Superior Courts, on application in writing to the justices, within three days after the hearing.

By sect. 23, theatrical representations in any booth or show, or any lawful fair, feast, or customary meeting, are exempt from the operation of the Act. A fair may be prohibited; and in the case of a person who had taken a piece of land for three weeks, for the purpose of holding a fair, the police were justified in removing him and his theatre from the premises. Under the 38th section of the Police Act (2 and 3 Vict. c. 47), the police have authority to take into custody the owner of any booth at a fair, if he keeps open after eleven at night, and before six in the morning, for the purpose of business or amusement, for which he is liable to a fine of £5; and every person being therein at the time, if they do not leave when bidden by the constable, may be fined forty shillings. For erecting booths at unlawful fairs, the penalty is £10. The validity of the fair may be tried before a magistrate, by summonsing the owner of the ground, and, on entering into recognizances, referred to the Court of Queen's Bench.

THEATRES, AS AFFECTED BY THE LAW.

STIPULATIONS peculiar to the nature of certain property may be entered into between landlord and tenant, and on these, questions of law will often arise.

In strict law, a right to enter and remain on another person's premises can only be conferred by deed, and then only so long as the lessee is in actual possession. The reservation contained in a lease of a right to the proprietor to enter a theatre any time during theatrical performances, becomes revoked in case the theatre should be sub-let to a third party by parol. In the case of the Norwich theatre, the trustees of which demised the theatre for a term of three years, reserving a licence to themselves and the proprietors of free admission during the time of representation of any play, &c.; and the lessee entered into an agreement to underlet the theatre for two nights for the purpose of dramatic performances, it was held that, under these circumstances, the proprietor could not rely on his right to be present, to enforce which was a trespass in point of law: *Coleman* v. *Foster*.

In *Taylor* v. *Waters* it was laid down that a grant, not being an interest in land, but a licence to enjoy the privilege of admission to the theatre, it was not necessary that it should pass by deed; and so in *Flight* v. *Glossop*, where an agreement had been entered into for the use of two boxes at a theatre, subject to the fulfilment of certain conditions. Here the transaction was regarded as a mere personal covenant—a kind of bonus or a cloak for usurious dealing, and not an agreement running with the land. It would seem that the privilege of free admissions should pass by deed, and this view has been taken recently in *Wood* v. *Leadbetter*. The plaintiff bought a guinea ticket for the "close" and the grand-stand on the Doncaster race-course, and was expelled without unnecessary violence by the steward, without returning the guinea. It was held that the right to come and remain upon the land of another can be granted only by deed; and a parol licence to do so, though money be paid for it, is revocable at any time, and without paying back the money.

In *Helling* v. *Lumley*, where the lessee assigned his lease to the defendant, subject to his right of possession to a certain box during the residue of the lease and the term of renewal; and where in the renewed lease the defendant was empowered to select forty-one boxes, and to let them otherwise than from year to year, and from season to season, and that the box in question was not included in such selection, the Court of Chancery decreed on an appeal that the lessor was entitled, as against the lessee, to the benefit of the

reservation of the box contained in the assignment of the original lease. Although a court of equity will not in general decree specific performance of an agreement of which the forfeiture of a lease will be the consequence, it will not allow a person to set that consequence up as a defence to a suit for specific performance, when the act creating the forfeiture is one which he might himself have guarded against.

The decision in *Croft* v. *Lumley* settled the point as to how far a manager is justified in closing a theatre for a length of time in contravention of a covenant in the lease, when to open it would be prejudicial to his interests to do so. The action was one of ejectment for a breach of covenant, contained in a lease of Her Majesty's Theatre, that the defendant should not convert the same to any use than for performing operas, plays, &c., as had usually been given therein, but would use his utmost endeavour to improve the property for that purpose; and that he would not grant away or assign any of the boxes or stalls of the theatre for a longer period than one year or season; nor charge nor encumber the theatre for the term thereof, by mortgaging, or granting rent charges, &c. From 1852 to 1855, the theatre was not open for entertainment of any kind, contrary to the provision to "improve the property." The lessee had in 1852, by indenture, demised certain boxes for the term of one year, to hold from the next opening of the theatre, in opposition to the covenant not to dispose of any for a longer period than a year or season; and certain warrants of attorney, and judges' orders, were relied on to establish a breach of the covenant "not to encumber." On appeal to the House of Lords, it was held that the covenant was not broken by the lessee not opening the theatre for two seasons, and that it ought to be limited to keeping the house itself properly decorated and improved with scenery, and all appointments necessary to an opera house, and not that a lessee should be bound, at a loss, to keep it open for theatrical performances. That the granting, before the close of the current season, a lease of a box for the term of one year, to commence from the first day of the next season, was not a breach of the covenant of disposition, and that there was no breach in giving *bonâ fide* warrants of attorney, the defeasance of which disclosed that they were given with the intention that judgments should be entered thereon, and that such judgments should be registered, and should stand as securities for debts, upon default in payment of which, by a day named, execution should issue, notwithstanding the 1 and 2 Vict. c. 110, which makes such a judgment on registration operate in all respects as a charge upon the lease, and also although this might be taken in execution under the judgment confessed.

In *Malone* v. *Harris* the owners of a theatre by deed, made for valuable consideration, covenanted to confirm to certain debenture holders the privilege of free admission to the theatre. The petitioner was entitled under the deed, but subsequently lost his debenture, upon knowledge of which the respondent refused to permit him to exercise any of the privileges of a debenture holder;

the petitioner then prayed for a declaration that he was entitled to the two debentures, and the privileges flowing from them, and to restrain any obstruction to the exercise of his right. The question was tried at common law and decided in the negative. A court of equity will, in some cases, enforce an equitable right, grounded on acquiescence, whether running with the land or not. But the court will not act in defiance and denial of a judgment at law. A licencee, in such a case as this, has no *locus standi* in a court of equity. There is nothing on which the licence can operate, so as to confer an interest in the subject-matter. It is simply a right of free entry for pleasure, granted for pecuniary consideration, and as such governed by *Wood* v. *Leadbetter*.

Theatres, like other property assessed to the taxes, are rated to the poor at about two-thirds of the annual value. If occupied only a portion of the year, they must be rated according to an estimated annual value. Even a box in a theatre is liable to be rated, if by purchase or lease it can be shown to be a tenement, although the owner has no right to use it, only on the occasion of the representation of plays, &c.: *Reg.* v. *the Inhabitants of St. Martin's in the Fields.* Here Miss Burdett Coutts appealed against an order of sessions for the payment of £1 13s. 4d., being the sum total of 4d. in the pound on £100, the rateable value of a box at the Theatre Royal, Drury Lane, the gross estimated rental of which was £120. The rate was duly made, allowed, and published, pursuant to a local Act of Parliament (10 Geo. III. c. 75) for building a workhouse in the parish of St. Martin's-in the Fields. The box in question, and a small room adjoining, was demised in 1795, by Sheridan and Linley, the proprietors, in consideration of £6000 paid by the late Thomas Coutts, Esq., for 100 years, at a peppercorn rent of 1d. per annum. In 1809 the theatre was destroyed by fire, and in 1812 a new one was erected under the powers of two Acts of the 50 and 52 Geo. III., one for the rebuilding, and the other for enlarging powers. A further indenture was executed for the remainder of the term, on the payment of a further sum of £3000. The Court held that the lessee was rateable to the poor for the occupation of the box, although the company of proprietors were rated for the theatre generally.

Under the 6 and 7 Vict. c. 36, societies instituted for the purposes of science, literature, and the fine arts, are exempt from rates, but not so unless they hold exclusive possession, although the funds might otherwise be applied to the objects of the institution, as in the case of the "Society for the Acquisition and Diffusion of Useful Knowledge" at Greenwich, since licenced, which had been certified by the barrister to be exempt from rates, the fact of exhibitions of various kinds having taken place there—as, for instance, of a celebrated dwarf, certain North American Indians and conjurers; and that other parts of the building had been let for various purposes. This was held to be a perversion of the original objects of the society to a foreign purpose; and in the case of *Reg.* v. *Brandt and others*, where a number of gentlemen in Manchester and its neighbourhood had formed themselves into a musical society, built a concert hall,

and subscribed five guineas each annually towards defraying the expenses, and at which music of a high class was generally practised and performed, it was held that the society could be regarded only as a musical club, and not as a society instituted for the purposes of "science, literature, or the fine arts exclusively," within the statute. Lord Campbell in delivering judgment said, "We cannot distinguish this from any other public amusement conducted in a great town by subscription. If a theatre were established on the same footing, it would have an equal claim to exemption, and the same argument might be urged in favour of a subscription ball-room."

Under a local Act passed in the reign of Charles II., Covent Garden Theatre was rated by the churchwardens of St. Paul's, Covent Garden, as a *house*, and the rate levied by distress. On an action for trespass, the Court decided that a theatre is not a *house* within the meaning of the Act, which directed a rate to be paid by the occupiers as of a dwelling-house: *Surman and another* v. *Darley*.

A patentee of a theatre has only, in common with the rest of her Majesty's subjects, the power to sue for the penalty as a common informer. He has no right of property under the patent which would enable him to maintain an action on the case, notwithstanding the remedy given by the Act, and the Court has no power to grant an injunction. By the 26 Geo. III. c. 57, s. 1 (Irish), the Crown was authorized to grant letters patent for establishing and keeping a theatre in Dublin; and by section 2 it was enacted that no person should for hire act any play, in any theatre in Dublin, except in such theatres as should be so established by letters patent, under the penalty of forfeiting £300 for every such offence, to be sued for by the common informer. Under this statute the Crown granted letters patent for the establishment of a theatre, and the Court held that the patentee could not maintain a bill for an injunction to restrain unauthorized persons acting plays in a theatre in Dublin, for the keeping of which no patent had been granted. Such a bill can only be maintained upon the ground of interest in the plaintiff; and, unless he can sustain an action on the case, the injunction cannot be supported. The prohibition and penalty are both in the same clause. The prohibition in the first instance would operate against all the world, and a breach of it cannot be prevented by a court of equity, but subject the parties to the heavy penalty of the Act: *Calcraft* v. *West*.

An injunction will restrain an acting manager, having entered into an agreement not to write for other theatres, from doing so for his private benefit: *Coleman's Case*.

Proof that the managers of a theatre jointly engaged a performer, is sufficient *prima facie* evidence that they were partners, and jointly liable: *Emery* v. *Chatterton*.

Managers are liable for wilful neglect of any thing which may result in injuries to performers while in the execution of their duty; such, for instance, as leaving unguarded by fence or light, without notice, traps or holes on or about the stage, which the performers are likely to fall into in the exercise of their calling. The principle of the old Mosaic law, cited in Exodus xxi. 33, 34, is

still applicable to this class of cases, though another precedent, dating as far back as the reign of James I., is a case in point as regards this kind of action: a horse having strayed on to a waste where there was a pit, and fallen into it, the owner of the land was held not liable, because it was the fault of the owner of the horse that it strayed. Admitting that a person may recover damages for injuries sustained by accidentally falling into an unguarded hole in a portion of the premises, yet, if he has been warned not to go in the direction of the hole, he cannot recover: *Street* v. *Webster*.

In the ordinary relation of master and servant, there can be no duty implied on the part of the master to protect the servant against injury arising either from the neglect of another servant, or from the defect or condition of the master's property, where there is no contract existing, unless such condition has been caused by the personal negligence of the master. In *Seymour* v. *Maddox*, the plaintiff was engaged to sing in the chorus of the opera of the "Crown Diamonds," at the Princess's Theatre, and, in passing from the back of the stage to the dressing-room, fell into a hole which had been cut in the floor and left unguarded. The following extract from Justice Erle's judgment in the case, will convey in short the law with reference to this kind of action;—"The allegation of duty is an allegation of mere matter of law; and it is necessary to state facts from which the duty which is charged to be broken arises. If the facts are insufficient for their purpose, the allegation of duty will not help. Here it is stated that the defendant held a theatre in which he hired the plaintiff to perform, that in part of the premises there was a hole in the floor, along which the plaintiff had to pass in discharge of his duty as a performer, and that it was the duty of the defendant to light the floor sufficiently, so as to prevent accidents to those who had to pass along it. Was any such duty cast upon the defendant? I think not. A person must make his own choice whether he will pass along the floor in the dark, or carry a light. If he sustain injury in consequence of the premises not being lighted, he has no right of action against the master, who has not contracted that the floor should be lighted."

In the recent case of death, occasioned by the escape of a lion from its cage at Astley's Theatre, the coroner told the keeper and the proprietors, that the recurrence of such a catastrophe would involve a charge of manslaughter.

Precautions against fire are now made compulsory by the Lord Chamberlain, and chiefly in reference to the dresses of ballet dancers. The Lord Chamberlain accompanies his orders with a recommendation to managers, that they should impress upon the ladies engaged the necessity of using uninflammable muslin for dresses; that speedy and certain punishment should be inflicted upon all persons guilty of carelessness in respect of fire; the importance of facilitating, by every means in their power, the egress of all classes of the audience from the theatres: and the posting of the following regulations in a conspicuous part of the theatre:—

"REGULATIONS FOR THE BETTER PROTECTION AGAINST ACCIDENTS BY FIRE AT THEATRES LICENSED BY THE LORD CHAMBERLAIN.

"1. All fixed and ordinary gas-burners to be furnished with efficient guards. Moveable and occasional lights to be, when possible, protected in the same manner, or put under charge of persons responsible for lighting, watching, and extinguishing them.

"2. The floats to be protected by a wire guard. The first ground-line to be always without gas, and unconnected with gas, whether at the wings or elsewhere. Sufficient space to be left between each ground line, so as to lessen risk from accident to all persons standing or moving among such lines.

"3. The rows or lines of gas-burners at wings, to commence four feet at least from the level of the stage.

"4. Wet blankets or rugs, with buckets or water-pots, to be always kept in the wings; and attention to be directed to them by placards legibly printed or painted, and fixed immediately above them. As in Rule 1, some person to be responsible for keeping the blankets, buckets, &c., ready for immediate use.

"5. These regulations to be always posted in some conspicuous place, so that all persons belonging to the theatre may be acquainted with their contents; every breach or neglect of them, or any act of carelessness as regards fire, to be punished by fines or dismissal by the managers.

"SYDNEY, Lord Chamberlain.

"Lord Chamberlain's Office, Feb. 5, 1864."

There is no statute law to prevent performances of a daring and perilous nature. Indeed, it would be a difficult matter to legislate upon. Sir George Grey, in his letter to the directors of Aston Park, Birmingham, where the late melancholy accident occurred to a female performer, could only hope that a repetition of such dangerous performances would not be again allowed by them. Should this species of amusement grow into public distaste, the result will cure itself. It will then be just possible of being construed into a nuisance, or the unpopularity of the performance will place proprietors' licences in jeopardy.

Magistrates may object to the exhibition of dangerous performances when connected with a circus visiting a town, by refusing permission for it to enter.

Custom has a good deal to do with the privileges of an audience, and any one leaving a theatre during the performance, has a right to a ticket of readmission, or to be readmitted the same evening. It was held by the late Mr. Jardine, the magistrate of Bow Street, that a *check* could be demanded, and that the possessor of the check had a right to give it to any one he chose, and that the holder was entitled to admittance on presenting it. In the absence of any implied contract, this ruling would appear to hold good, and custom does not forbid the transference of a vested right.

Where it is the custom to charge extra for tickets purchased before the performance to which they relate, for booking and retaining places, the extra fee is a bonâ fide claim: *Lyttelton* v. *Kean.*

In this case it was argued that the price of admission advertised in the bills, &c., was a contract with the public for that sum. On the other side, it was contended that those prices referred to the time when the doors were open, and not when the plaintiff had the advantage of picking a place. The judge held that custom sanctioned the charge.

Where a gentleman took certain places in the boxes of a theatre for himself and friends to witness a performance, subject to the conditions printed on the receipt, "places secured until the end of the first act only," and he did not appear to occupy the seats in accordance with these terms, it was adjudged that he had forfeited all claim to them: *Young* v. *Buckstone*. A seat previously engaged at a theatre by ticket, exclusively belongs to the holder, and removal of the holder from the same by force is an assault.

Where no express information is given to a tradesman in the habit of serving the proprietor or lessee of a theatre with goods that the theatre has been sub-let, they may be held liable for goods ordered by the under-tenant. The fact of the lessee's name appearing as such on the playbills is some proof of his liability: *Burnet* v. *Caldwell*.

If a proprietor accepts an agreement, and receives a deposit, he has no right to turn off the gas after the audience are seated: *Lawrence* v. *Knight*.

The question as to whether a charge can be legally made for the care of bonnets and over-garments at a theatre, appears uncertain. Where no contract is made, the probability is there can be no charge. The umbrella case at the Exhibition is nearest in point There the charge could not be maintained, because notice had been given of an intention not to pay, and consequently no contract had been entered into: *Garnham* v. *The Commissioners*. Independent of the question of liability to pay for the care of bonnets, &c., the judge of the Westminster County Court has recently decided, that the proprietor of a place of entertainment has no right to insist on a lady taking off her bonnet; but, at the same time, recommended the defendant (*Pickwead* v. *Austin*) to have the notification printed on his tickets, as it might be the means of preventing misunderstanding in future, although he did not think it would justify the defendant in enforcing it.

MUSIC AND DANCING.

The statute for the regulating of places for music and dancing has been in force now just 111 years. It passed the legislature in the 25th year of the reign of George II. (1752), and was limited to three years, at the expiration of which period it was made perpetual by the 28 George II c. 19, and the clauses relating to the management of these places of amusement were part of an Act "for the better preventing thefts and robberies, and for regulating places of public entertainment, and punishing persons keeping disorderly houses." It owes its origin to a pamphlet published by the celebrated Henry Fielding in the preceding year, entitled, "An Inquiry into the Causes of the late increase of Robbers, &c." The following are the clauses contained in the Act relating to this subject:—

By section II. it is enacted, "That from and after the first day of December, one thousand seven hundred and fifty-two, any house, room, garden, or other place, kept for public dancing, music, or other public entertainment of the like kind, in the cities of *London* and *Westminster*, or within twenty miles thereof, without a licence had for that purpose from the last preceding *Michaelmas* quarter sessions of the peace, to be holden for the county, city, riding, liberty, or division, in which such house, room, garden, or other place is situate (who are hereby authorized and empowered to grant such licences as they, in their discretion, shall think proper), signified under the hands and seals of four or more of the justices there assembled, shall be deemed a disorderly house or place, and every such licence shall be signed and sealed by the said justices in open court, and afterwards be publicly read by the clerk of the peace, together with the names of the justices subscribing the same; and no such licence shall be granted at any adjourned sessions; nor shall any fee or reward be taken for any such licence; and it shall and may be lawful to and for any constable, or any person being therewith authorized, by warrant under the hand and seal of one or more of His Majesty's justices of the peace of the county, city, riding, division, or liberty where such house or place shall be situate, to enter such house or place, and to seize every person who shall be found therein, in order that they may be dealt with according to law (repealed by 5 Geo. IV. c. 83, s. 1); and every person keeping such house, room, garden, or other place, without such licence as aforesaid, shall forfeit the sum of one hundred pounds to such person as will sue for the same; and be otherwise punishable as the law directs in cases of disorderly houses.

III. Provided always, and it is hereby further enacted by the authority aforesaid, that in order to give public notice what places

are licensed pursuant to this Act, there shall be affixed and kept up in some notorious place over the door or entrance of every such house, room, garden, or other place kept for any of the said purposes, and so licensed as aforesaid, an inscription in large capital letters in the words following: *Videlicet*—LICENSED PURSUANT TO ACT OF PARLIAMENT OF THE TWENTY-FIFTH OF GEORGE THE SECOND; and that no such house, room, garden, or other place kept for any of the said purposes, although licensed as aforesaid, shall be open for any of the said purposes before the hour of five in the afternoon; and that the affixing and keeping up of such inscription as aforesaid, and the said limitation or restriction in point of time, shall be inserted in and made conditions of every such licence; and, in case of any breach of either of the said conditions, such licence shall be forfeited, and shall be revoked by the justices of the peace in their next general or quarter sessions, and shall not be renewed; nor shall any new licence be granted to the same person or persons, or any or other person on his or their or any of their behalf, or for their own use and benefit, directly or indirectly, for keeping any such house, room, garden, or other place, for any of the purposes aforesaid.

IV. Provided always, that nothing in this Act contained shall extend, or be construed to extend, to the Theatres Royal in Drury Lane and Covent Garden, or the theatre commonly called the King's Theatre, in the Haymarket, or any of them; nor to such performances and public entertainments as are or shall be lawfully exercised and carried on, under, or by virtue of letters patent, or licence of the Crown, or the licence of the Lord Chamberlain of His Majesty's household; any thing herein contained notwithstanding."

The application to the clerk of the peace for the county for a licence for music, or music and dancing, need only state simply what is the nature of the licence required. It will then be the business of the police authorities to ascertain whether there are any local objections to the licence being granted. The Michaelmas quarter session is the only time fixed by the Act for the granting of licences, but due notice must be given to the clerk of the peace of intention to apply at the sessions. The period of notice varies in different districts, and the rules of sessions generally require that the applicant should be present. The following orders made by the Middlesex quarter session, holden on the 16th day of July, 1863, as to the granting of licences under 25th Geo. II. c. 36, will give some idea what the preliminary arrangements are generally under the Act.

I. That all persons intending to apply for licences for music, dancing, or other public entertainments of the like kind, under statute 25 Geo. II. c. 36 (except the parties mentioned in order No. 7,) shall give *two months'* notice at the least, previously to the commencement of the Michaelmas quarter sessions, to the Clerk of the peace for this county, and to the clerk of the petty sessions of the division wherein the premises are situate, of their intended application; and shall also, *two months* at the least before the

commencement of such session, cause a Notice in the undermentioned form to be affixed upon the outer door or other conspicuous part of the premises sought to be licensed, and upon the outer door of the police station, or other place of confinement in the parish, in which such premises shall be situate, and shall also serve copies of the last-mentioned Notice upon the churchwardens and overseers of the parish in question, and also upon the clerk to the vestry or guardians of the union or parish in which the house is situate, with the view to such Notice being affixed in the entrance hall, or some conspicuous part of the building in which the meetings of such vestry or guardians are held, *two months* before the commencement of the said sessions.

FORM OF NOTICE.

I of do hereby give notice, that I intend to apply, under the provisions of the statute 25 Geo. II. c. 36, at the next Michaelmas quarter session for the county of Middlesex, to be holden at Clerkenwell, on the day of 18 for a licence for [*here insert the particular sort or sorts of public entertainment for which the licence is required*], to be carried on within the house or premises situate at or known by the name of—*(as the case may be)*, and now in the occupation of me the subscriber hereto.

II. That every person presenting a petition against the grant or renewal of a licence, shall leave with the clerk of the peace, *fourteen clear days before the commencement of the Michaelmas quarter session,* a copy of such counter petition, for the inspection of the party applying for such grant or renewal.

III. That the blank forms of the licences shall have printed upon the back of them the title of the Act by authority of which the licences are granted, and the statement that such licences are to be granted without fee or reward.

IV. That previous to the first day of the Michaelmas quarter session, the clerk of the peace shall transmit a list of the persons making application for music or dancing licences, under the statute 25 Geo. II. c. 36, to the Excise office, and to the police courts of the districts in which the houses occupied by such persons are situate, for the purpose of ascertaining whether any and what complaints have been made against them; and that the return to such application be laid before the court when such licences are applied for.

V. That annually, in the first week in August, application be made by the clerk of the peace to the justices acting in their several special sessions' divisions throughout the county, requesting they will present to the court, on the first day of the Michaelmas quarter session, a written report of the houses with respect to which notices of intended applications for licences for music and dancing—or for music only, shall have been received by the clerk to such justices.

VI. That every applicant for a music or dancing licence be required to attend the court personally, unless a reason satisfactory to the court shall be assigned for his absence.

VII. That in every case, when any person having a music or dancing licence shall transfer his premises to any other person, such incoming tenant shall be required to give *one month's* notice instead of the *two months'* notice required by order No. 1.

In granting a licence the magistrates should take into consideration the wants and requirements of the neighbourhood and the accommodation of the public, and that discretion should be exercised in a reasonable manner, (*Reg.* v. *Sylvester and others,*) and nothing that concerns the peace, order, and convenience of the public relatively to this subject should be excluded from consideration.

A similar rule applies to the granting of music and dancing licences as does to the granting of spirit licences. The justices only grant licences under circumstances specified in the Act, viz.:—

1. The fitness of the person applying for a licence.

2. Whether the house is a fit and proper house for carrying on the trade of an innkeeper or licensed victualler.

3. Whether the house is required by the wants of the neighbourhood, and for the accommodation of the public.

Magistrates have a great discretionary power vested in them under the statute, and property of an enormous amount rests solely on the result of their judgment. Justices of the peace carry with them their prejudices, and among themselves generally differ as to the propriety of granting particular licences, and what may be allowed as part of an entertainment. Thus, under a music licence, some magistrates will allow Blondin and Leotard to follow their perilous calling; while others in another district will forbid it, though neither of these performances come strictly under the licence, but being part of entertainments provided under the licence. The method of adjudication in matters of licensing in the absence of unanimity, is by division, and the majority rules.

A licence may be granted on condition of applicant undertaking to close at 12 o'clock; to discontinue music on a Sunday; or disallow dangerous performances; or to enable an innkeeper to accommodate the inhabitants in suburban places with a ball occasionally. Parties obtaining licences for music only, are cautioned not to allow dancing.

For the first forty years the Act was in operation, the following places only were licensed:—Sadler's Wells, Ranelagh, Marylebone Tea Gardens, Bell at Edmonton, Angel at Edmonton, Hampstead Long Rooms, and King's Head, Enfield; the latter continues licensed to the present day, which, with the addition of four others, formed the number of licences granted before the close of the century, during which time twelve licences were refused. From 1800 to 1828 the applications were thirty. In 1829 sixteen applications were made, and from that date to 1839 they annually increased. In that year alone they amounted to seventy-five, when they gradually diminished till 1849, in which year they again rose to eighty-seven applications.

Conditional licences are becoming the rule instead of the exception, whether in point of law valid or not. In 1834 Lord Campbell was of opinion that a licence could not be legally given for music only, but that the licence must follow the words of the statute, and include "public dancing, music, and other entertainments of the like kind."

Licences have been refused by the magistrates to the proprietors of houses where the reading of plays had been given on a Sunday; where perilous and dangerous entertainments were provided; where free admissions had been distributed to servants in the neighbourhood; where the premises which were required to be open on Sundays were in close proximity to a church, and annoyed persons going to and from; where a spirit licence had been obtained from the commissioners of excise, after the same had been refused by the magistrates; where part of a property, once licensed, remained; where proprietor follows his calling as musician away from home; where the house is ill-conducted and the resort of immoral characters or thieves; where the rules of the Court had not been complied with. Though there may be no legal objection to granting a music licence to a person about to succeed to the proprietorship of premises already licensed to another person, before the transfer of the spirit licence, it is essentially a question for the bench of magistrates whether they think proper, under the circumstances, to endorse the transfer of the music licence: *Re Kroachy*.

It has been decided that the 25 George II. c. 26, extends to houses kept for the purpose of private dancing, not to public places only. The paying for a ticket of admission will constitute it "a house kept for public dancing" within the section: *Clarke* v. *Searle*. But it is not necessary, in order to subject a party to the penalty of the Act, that he should take money for admission. In *Archer* v. *Willingrice* the defendant allowed another person, who professed to teach dancing, the use of a part of his house. This person charged one shilling and sixpence each for admission. The Court held it sufficient to shew that there had been music and dancing publicly carried on there. Another case similar to the last is *Marks* v. *Benjamin*, where it appeared that the defendant was a publican, and that music, dancing, and masquerades had occasionally been held at his house; where, from its vicinity to the great synagogue, Jewish marriages were frequently celebrated. The rooms were let to persons who sold tickets and received money for admission at the door; but there was no direct evidence that the defendant knew of this practice, which was held to be a question of fact for the jury.

It is immaterial that the company frequenting the performances were respectable, or that the admission money was not received for the benefit of the keeper of the house: *Green* v. *Botheroyd*. But where a room had been taken of the landlord of a public-house by a Jew for eight days, the period of the Jewish passover, for the entertainment of people of the Jewish persuasion during that period, although money was taken at the door for admission,

which was paid to the fiddler, it does not subject the owner to the penalty of the statute, if the premises were not at other times appropriated to the purpose. To the mere use of a room for a temporary purpose of music and dancing, the statute does not apply, as the house or room should be *kept* for that purpose, *Shuff* v. *Lewis*. A room kept by a dancing-master for the instruction of his scholars and subscribers, and to which persons are not indiscriminately admitted, was held in *Bellis* v. *Burghall* not to be within the statute.

But a room, in which musical performances are regularly given, no matter whether the musicians are paid or not, though it is not *kept* or used solely for that purpose, may be also considered within the meaning of the Act: *Bellis* v. *Beal*. This decision would appear to have been impugned by *Hall* v. *Green*, but for the fact that all the judges were of opinion that the finding of the jury was against the weight of the evidence. The defendant was the proprietor of Evans's supper room, Covent Garden, where there was a piano on a raised platform, from which music was performed and songs constantly sung, sometimes by persons in character and sometimes not. Printed programmes of the songs were laid about in different parts of the room. The company was respectable, and no money was paid for admission, nor was any extra charge made for the liquors and other refreshments consumed in the room. At the trial, the judge directed the jury to say whether the room was used for the purpose of supplying refreshments in the manner of an ordinary hotel, the singing being merely incidental, or whether it was used principally for the purposes of musical performances, or both. The jury found that the room was used for the purposes of an hotel, and returned a verdict for the defendant. On motion for a new trial, Mr. Baron Martin dissented from the two other judges as to the propriety of telling the jury to consider whether the keeping of the room as an hotel was the principal or secondary object; but they were unanimous in opinion that in a penal action no new trial can be granted.

On the other hand, a room used for music and dancing, although not exclusively used for those purposes, and although no money be taken for admission, is within the meaning of the statute; but the mere accidental use of a room for either or both those purposes is not. If a room be continually used for the purpose of music and dancing, it will be for the jury to say whether it is not *kept* for those purposes; and a room kept for drinking, music, and dancing is within the statute.

A person who should think himself *aggrieved* has been decided to mean a person *immediately* aggrieved and not *consequentially* aggrieved: *Rex* v. *Justices of Middlesex*, (see page 43.) An appeal, therefore, must be by the person to whom the licence was refused, to the bench of quarter sessions, who may, in their discretion, grant a case for the opinion of the Court above; or, if they refuse to entertain the question, it may be tried by applying for a *mandamus*. The 20 and 21 Vict. c. 43, does not apply.

A wine licence cannot be granted under 23 Vict. c. 27, s. 13, to

premises intended for a place of public entertainment and resort, for which a fee is charged for admittance. The privilege under the Act only extends to confectionery shops and eating-houses: *Re Weston.*

Representation of any thing of a dramatic nature renders both the proprietor and the performers liable to the penalties of the Act of 6 and 7 Vict. c. 68, for regulating theatres. It has been held that even one person singing a song of a descriptive character, such as the "Ship on Fire," and giving effect to the words and emotions of the supposed sufferers, is a dramatic piece within the meaning of the 5 and 6 Vict. c. 45, s. 20, 21, (see page 20.) That being a penal statute, strict proof must be given of each performance. A playbill containing the announcement of a piece, is not sufficient evidence of its production, but good corroborative evidence: *Harrington* v. *Edgar.* It must be proved that the defendant is the proprietor of the establishment.

Proof that there is nothing painted on the house, denoting that it is licensed under the statute, is *prima facie* evidence, in an action for penalties, that it is unlicensed: *Gregory* v. *Tuffs.*

The 57 section of the Police Act, 2 & 3 Vict. c. 47, empowers any householder or his servants to require any street musician to depart from the neighbourhood of his house if, from the illness of an inmate, or other reasonable cause, it is necessary; and, in case of refusal, to be liable to a penalty of 40s.

PROFESSIONAL ENGAGEMENTS.

Written contracts or agreements, setting forth in general terms the conditions of engagements, may be qualified by parol evidence as to the usage or custom connected therewith. The words themselves of an agreement cannot be altered; but parol evidence may be given as to their meaning. This is not to alter the contract, but to shew what it is. Whenever the words used have, by usage or local custom, a peculiar meaning, that meaning may be shewn by parol evidence. An experienced person may give his opinion as to usages, but must not construe them. At the same time the Court will guard themselves against saying, that where a certain usage exists, and the parties have put the terms of their agreement into writing, they can say that the agreement is to receive a different construction, because it is contrary to the usage. Where an actress, for instance, engaged herself to perform for three years at a certain sum per week, and at the expiration sued for the balance due on the whole period, the custom of the profession was held to be sufficient proof that the agreement only extended to the theatrical season in each of those years: *Grant* v. *Maddox*. An engagement without any agreement, or for a season, cannot be terminated by notice to leave within the season. Under those circumstances, to complete an engagement, without mutual consent, the season must be brought to a close. But the granting a request to play a certain character, and being allowed to repeat it, is not an engagement for the season: *Macarthy* (*O'Toole*) v. *Bunn*. In *May* v. *Smith*, it was ruled that usage is not always binding. Even if it was shewn that the manager acted from malice, it is not certain he would be liable to make compensation. The plaintiff was engaged as *prima donna*, and cast to play the principal part in the opera entitled "Robin Hood," at Her Majesty's Theatre; but, subsequently, another lady was engaged to take the part, and hence the breach of contract. It is presumed that the manager, willing to abide by the pecuniary terms of the agreement, is not bound to fulfil the whole of it to his own disadvantage; or he is entitled, at least, to select the occasions on which the artiste shall appear, in the event of readiness and willingness, the absence of which would, of course, be a breach on her part.

A performer is not compelled, under the general terms of an engagement, to undertake a part in a play without reasonable notice, when by doing so his reputation as an actor may be at stake. In *Graddon* v. *Price*, the plaintiff was called on, at a day's notice, to play the part of "Catherine" in the "Siege of Belgrade," in consequence of the sudden illness of another actress. This she refused to do, thereby rendering herself amenable to the rules and

regulations of the theatre, which imposed a fine of £30 on any performer refusing to study, rehearse, or perform at the appointment of the manager. The judge in summing up observed, that the proprietors of theatres were perfectly right in having regulations and enforcing them by fines, in order to keep faith with the public, and for their own security. But the jurisdiction given to a manager by the rules was often very arbitrary, and all arbitrary jurisdictions have a limitation. A person, therefore, subject to such rules, should have proper and sufficient notice of what is required of him, and, if such reasonable notice has not been given, he is not bound to stake his professional reputation by taking a part in haste.

Formerly it was decreed that where the Court could not enforce the positive part of a contract, it would not restrain by injunction the negative part. This dictum of the law was very properly overruled in the case of *Lumley* v. *Wagner*, where the latter agreed to sing at the plaintiff's theatre during a certain period of time, and not to sing elsewhere without his written authority. The plaintiff failed to fulfil a portion of his contract, and, in consequence, the defendant abandoned her engagement in favour of Gye, the lessee of Covent Garden Theatre. It was held that the positive and negative stipulations of the agreement formed but one contract, and that the Court would interfere to prevent the violation of the negative stipulation, although it could not enforce the specific performance of the entire contract. The effect of this decision has been to overrule several cases on the point of law, of what constitutes, or who is, a servant to an employer. Mr. Justice Coleridge alone holding, that as between master and servant, the case did not fall within the statute of labourers, 23 Edward III., and the other judges were of opinion that the Act extended to all cases where one person was employed by another, whether the service was then actually subsisting or not. The subject-matter of the agreement in writing, must be clearly defined, and capable of being executed after the manner agreed upon. It must be for valuable consideration, and in character unexceptionable. Enforcing a specific performance is a matter of discretion. It must be regulated on grounds that will make it judicial. "It is true," said Lord Chancellor Sugden, "that I have not the means of compelling the lady to sing; but she has no cause of complaint if I compel her by injunction to abstain from the commission of an act which she has bound herself not to do, and thus possibly compel her to perform the agreement."

Out of the same transaction an action was maintained against Gye, for maliciously procuring a breach of contract. To sustain such an action, it is not necessary that the employer and employed should stand in the strict relation of master and servant, but the procurement must be during the subsistence of the contract, and produce damage.

Again, in the case of *Webster* v. *Dillon*, where the defendant contracted to play at Sadler's Wells Theatre for twelve consecutive nights, to commence on a certain day, and stipulated that he should

be at liberty during those nights to perform certain characters, making no express condition that he should not act elsewhere, and afterwards refused to sustain them, and insisted on playing a part in a piece which he knew the lessor, by the terms of his agreement with the lessee, was precluded from producing, and, in consequence, engaged himself to play at Drury Lane during the period. An injunction was granted to restrain defendant from executing engagements manifestly incompatible with the spirit and true meaning of the agreement, although the agreement was of such a nature that the Court could not enforce its specific performance.

In breaches of contract, the court of equity is often called upon to interfere, by means of injunction, to restrain the performance of an illegal act. Thus an injunction may be obtained to restrain any performer from adopting the name of another, or the proprietor of an establishment from allowing the same, when the purpose is to damage the fame of an artiste: *Wilde* v. *Gear*. Or to restrain a person, under a contract, from performing, or any one else from advertising his appearance, at any other place, if the terms of the agreement bind him not to do so without the consent of the proprietor: *Smith* v. *Rigby*. And, even if the defendant be under age, it is no defence.

In the event of the destruction of a theatre or place of entertainment by fire or otherwise, before the time of using the same, according to the terms of agreement, all parties are discharged from the contract: *Taylor and another* v. *Caldwell and another*. Here the defendants agreed to let the plaintiffs have the use of the Surrey Music Hall for four specified days, for the purpose of giving concerts, &c. The day before the time appointed for the first concert, a fire broke out in the premises, and burnt them down. The plaintiff therefore, being prevented from carrying out his agreement, sought to recover the preliminary expenses incidental to such an undertaking. No express stipulation was made with reference to such a disaster, and the defendants pleaded that they had no control over the cause of the fire. The general rule of law is, that when a party makes a positive and absolute contract to do a thing, he must perform it or pay damages, although, in consequence of unforeseen accidents, the performance of his contract has become unexpectedly burdensome or even impossible; but when, from the nature of the contract, the parties must from the beginning have known that it could not be fulfilled, unless some particular specified thing continued to exist, and on which the contract was based, and without which it could not be carried out, in the absence of any condition, either express or implied, the contract is not to be construed as a positive contract, but subject to an implied condition, that when the specified thing perishes or ceases to exist without the fault of the contractor, the parties shall be excused. So, in the present case, the parties having contracted on the basis of the continued existence of the Music Hall, and the hall having ceased to exist without the fault of either party, both parties were excused.

It is clear that, if a contract is made, and from causes over

which the performer has sole control it cannot from accident be carried out, the sum agreed upon cannot be recovered: *Young* v. *Wilkins*. In that case a rope-dancer had erected a tight-rope in the open air, and the supports giving way, just before the hour appointed for the performance, the terms of the agreement could not be enforced against the proprietor, though all the spectators intending to see the performance were assembled. A second contract, made just previously to the breaking down of the supports of the rope, for a performance in the evening, under the circumstances could not be enforced, though the evening performance was gone through, from the fact that the original agreement had never been fulfilled. For the evening performance, though not under contract, a claim might be made.

If an agreement is entered into to perform in a certain place, or *elsewhere*, it is binding on the person making the contract to fulfil that obligation, notwithstanding the distance he may be ordered to go. In *Batty* v. *Melillo*, the defendant agreed that he and his wife would, "for the term of three months, appear, perform, and assist to the best of their ability, as equestrians on the stage and in the ring at all performances at Astley's amphitheatre, or *elsewhere*, under the direction of the plaintiff," and conform to the rules of the establishment. The plaintiff had an establishment at Peebles in Scotland, which he requested the defendant and his wife to attend, but they refused to do so; whereupon, about five weeks after the commencement of the agreement, the plaintiff issued his writ. It was held that the breach substantially shewed an entire refusal of the defendant to perform his contract, and disclosed a good cause of action.

If a person, as agent, signs a letter in which he agrees that his daughter shall perform at a theatre during the remainder of a season, and consents that she shall enter into articles for three following seasons, an action may be maintained on the first part of the agreement, for the refusal of the daughter to perform; but the latter part is a mere consent, and not an agreement: *Morris and another* v. *Paton*. A principal is liable for any engagement made by his agent, notwithstanding the agent has acted contrary to orders: *Lavigne* v. *Smith*. The plaintiff, a musician, accepted a verbal engagement to make a tour with the defendant's opera company in Scotland, and when on the eve of their leaving he was told that he was not required.

A theatrical or musical agent is entitled to whatever sum was paid him as commission for obtaining engagements, whether the party so engaged fulfilled the engagement or not: *Mathole* v. *Galeotti*. The plaintiff had paid the defendant the sum of 3500 francs to obtain a cancel of an engagement, which the defendant was unable to do; but who, after the expiration of the engagement of the plaintiff, obtained him another engagement to sing at Her Majesty's Theatre which the plaintiff was unable to fulfil.

One of a number of performers, signing a proposal on behalf of himself and the others to continue their services, provided a certain salary was guaranteed them, cannot sue for money due on behalf

of himself and the rest, the contract being a joint one: *Lucas* v. *Beale.*

Though, as a custom in the profession, an engagement without any conditions expressed or implied, is considered one for the season, there are some exceptions to this rule. It would be absurd to suppose that everybody engaged in a theatre at a weekly salary, is bound by the same law. The engagement of ballet-dancers, for instance, may be terminated by reasonable notice on either side, in the absence of any special agreement: *Fells* v. *Barnett.* A verbal agreement is always good if made in the presence of witnesses, so likewise is a notice to terminate an engagement. The property in a written agreement is not vested in one more than the other; and in a suit by one party for detaining a written agreement, the Court refused to interfere.

When the rules and regulations of a theatre are not produced at the time an agreement is entered into, it would not be just to bind a party to inconsistencies which might have been concocted after the agreement was made. No doubt, if a person agrees to be bound by the "rules and regulations," it is his policy to ascertain what they are before he puts his hand to the deed. If not, and he finds he has miscomprehended them, he can hardly expect to be easily relieved from their operation. At the same time, the common law will not sanction the enforcement of a rule, although admitted by the parties, if uniformly inconsistent with the main object of the agreement. It would be useless making an agreement to play for six months, if the engagement could be terminated by a fortnight's notice at any time, notwithstanding the custom under the rules: *Vernon* v. *Rhys.*

Engagements should be always entered into in writing, and properly stamped. Were this always done in the profession, many a suit at law might be avoided, and losses obviated from an inability to support an agreement only by oral testimony. A case in point, *Morgan* v. *Simpson,* will prove this advantage, although effect was given to the *viva voce* contract by the verdict of the jury in the plaintiff's favour, the latter signally failed in obtaining all the damages she was entitled to at the hands of the jury. In this case the defendant rendered it impossible, by disposing of his interest in the premises, for the plaintiff to fulfil her engagement.

In an action for breach of contract, it is not essential that the jury should give the full amount of damages sued for. They may allow such a portion of the penalties as they think will meet the justice of the case: *Morton* v. *Morris.*

A letter, in which the defendant in *Frazer* v. *Bunn,* who was a proprietor of a theatre, wrote to a third person saying, "F. must be satisfied with his present salary until I know what turn the season takes," does not amount to an agreement. Where the terms of an agreement were to vary in amount in accordance with the extent of business done, it was held that what a stage manager said at the close of a season, in his farewell address from the stage, as to the success of the theatre, is evidence against the lessee or proprietor upon that subject: *Lacy* v. *Osbaldiston.* If a

performer at a theatre has arrears of salary due to him, and money is paid to him without its being stated that it is paid on any particular account, he may appropriate the payment to any part of the arrears that he chooses.

Proposals in the shape of communication by letter, offering an engagement to an actor, which are afterwards verified, are not agreements requiring a stamp, and are admissible as evidence. It is only when the *whole* agreement is in writing that the stamp is necessary: *Hudspeth* v. *Yarnold.*

When an engagement is entered into, to perform at a theatre for a lengthened period, and although the salary be paid, and the services not required, a court of equity will not interfere to restrain a person so engaged from transferring his services to another house, if it is clear that a serious injury is being suffered by being kept for an indefinite time in a state of idle inactivity. *Fechter* v. *Montgomery.* Here the defendant, who was desirous of appearing before a London audience, had been deterred from doing so for five months, owing to the continued success of the "Duke's Motto" at the plaintiff's theatre.

As to what services may legally be required under the terms of a general agreement, subject to the "rules and regulations," the case of *Lyall* v. *Pyne and Harrison*, tried in Edinburgh, may serve as a precedent. By memorandum of agreement between the parties, the former is taken bound "to give his exclusive services to the said Louisa Pyne and William Harrison, to play and sing such parts as may be required of him, either in London or the provinces;" and the agreement is declared "to be subject to the rules and regulations annexed;" No. 4 of which declared that "any performer refusing or neglecting to act a part or cast assigned to him or her by the managers, shall forfeit for every such part, three weeks of his or her salary, and be liable to the cancellation of his or her engagement, or either, at the option of the managers." During an engagement of the company in Edinburgh, the managers required Mr. Lyall to sing and play, and assigned to him a short subordinate part in addition to the heavier character he was to represent in the same opera. Mr. Lyall having refused, the managers intimated that he had thereby forfeited three weeks' salary in terms of the 4th regulation above quoted. The sheriff, after taking time to consider the facts, "assoilzied" the defendants, which term, in Scotland, is equivalent to a verdict for the defendant in this country.

The rules of a theatre cannot be construed to neutralize an agreement, and, where an actor is engaged to play leading characters, he is not bound to play inferior parts: *Lyon* v. *Shepherd.* In this case the plaintiff was required to play the character of Polonius, in "Hamlet," which he refused to do, notwithstanding that the rules of the establishment gave the power to the manager to direct any actor to assist in dancing, singing, or otherwise, whatever his post might be in the theatre. The rules might be binding in minor cases for the proper management of the establishment,

if acquiesced in by the party engaged, but not so when they are in direct opposition to the terms of agreement.

If a person engages to play "first old men," and not to object to other parts, the case does not depend on a question of parts. For instance, where an actor was cast for "Tapwell" in "A New Way to Pay Old Debts," and by assumed rights he claimed the character of "Marrall," although "Sir Giles Overreach" would be the leading "old man," under the terms of the agreement he could not claim either part: *Rogerson* v. *Egan*.

Whether or not a person is competent to perform leading parts is, of course, a matter for the judgment of both parties. It may occur that a man can sing much better at one season of the year than at another, or better in the daytime than at night or from recent illness his energies might be impaired. In such cases the evidence generally is conflicting, and as such is a question for the jury to decide.

Liquidated damages cannot be reserved on an agreement containing various stipulations of various degrees of importance, unless the agreement specifies the particular stipulations to which the liquidated damages are to be confined. By articles of agreement in *Kemble* v. *Farren*, the latter agreed to act as principal comedian at Covent Garden Theatre for four seasons, and to conform to the usual regulations of the theatre, at £3 6s. 8d. for every night on which the theatre should be open for performance during the four seasons; and the agreement contained a clause, that if either of the parties should neglect or refuse to fulfil the said agreement, or any part thereof, or any stipulation therein contained, such party should pay to the other the sum of £1000 as damages. The agreement was not limited to breaches where the damages would be of uncertain amount, but extended to the breach of any stipulation by either party; the £1000 therefore could not be considered as liquidated damages. The Court said it was difficult to suppose any words more precise or explicit than those used in the agreement. The covenant extended to the breach of *any* stipulation by either party. It was therefore absurd to suppose that the damages could have been enforced by either party for the most minute or unimportant breach of the regulations, the case being precisely that in which Courts of Equity have always relieved, and against which, Courts of Law have in modern times endeavoured to relieve, by directing juries to assess the real damages sustained by the breach of agreement.

In *Aspley* v. *Weldon* the plaintiff agreed to pay defendant £1 11s. 6d. per week, and pay her travelling expenses, to perform at his theatres in London, Liverpool, and Dublin, or elsewhere, in such parts as should be required of her, and be subject to the rules of the establishment, and pay all fines; and in case either of them neglected to perform the agreement, should pay to the other £200. It was held that this sum was of the nature of a penalty, and not of liquidated damages.

Where a penalty is inserted merely to secure the performance of a contract, it is deemed an accessory, the legal operation of

which is not to create a forfeiture of the entire sum, but only to cover the actual damages occasioned; or the parties must show that it was so intended: but the fact of calling a sum liquidated damages will not change its character as a penalty, if, upon the true construction of the instrument, it must be deemed to be a penalty.

The breach of a promise to pay a balance due, as a condition precedent, within a week of signing a contract, is not sufficient to justify the party signing the contract to abandon the agreement, if it be shown that the offer of another engagement more lucrative had prevailed: *Gye* v. *Graziani.*

To prevent an actor in partnership with another in the management of a theatre, from performing at any other theatre, some restraint must be put upon him by means of agreement. In a simple contract of partnership only, there is nothing to prevent the partners from engaging in other and conflicting business. Where the Court is called on to interfere when the partnership is not proposed to be dissolved, it will only do so with regard to the due continuance of the concern. So in *Webster* v. *Boucicault*, where the latter, whilst in partnership with the former in the management of the *Adelphi*, played at *Drury Lane*. The fact of a person investing money in the management of a theatre, does not necessarily make him a partner in the concern: *Knox* v. *Gye.*

Formerly authors of plays were paid out of the proceeds of certain nights' performances of their productions, or took the proceeds of the first night's performance. Subsequently the actors claimed the proceeds of the first night, and the author the third. In some instances of successful production, this was extended to three or four nights for the benefit of the author, and more recently the author engaged for the proceeds of the third, sixth, and ninth nights. A dramatic author now disposes of his works with or without copyright; if without copyright, he is paid according to the success of the piece; and as no one can represent a play without the permission of the author or proprietor, who is protected by the Dramatic Copyright Act, payment is secured from managers in the provinces or elsewhere for any unauthorized representation.

APPENDIX.

A.

3 AND 4 WILLIAM IV. c. 15.

AN ACT TO AMEND THE LAW RELATING TO DRAMATIC LITERARY PROPERTY. 10TH JUNE, 1833.

WHEREAS by an Act passed in the fifty-fourth year of the reign of his late Majesty King George III., entituled, "*An Act to amend the several Acts for the encouragement of learning, by securing the copies and copyright of printed books to the authors of such books, or their assigns,*" it was, among other things, provided and enacted, that from and after the passing of the said Act the author of any book or books composed, and not printed or published, or which should thereafter be composed and printed and published, and his assignee or assignees, should have the sole liberty of printing and reprinting such book or books for the full term of twenty-eight years, to commence from the day of first publishing the same; and also, if the author should be living at the end of that period, for the residue of his natural life: and whereas it is expedient to extend the provisions of the said Act; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this Act, the author of any tragedy, comedy, play, opera, farce, or any other dramatic piece or entertainment, composed, and not printed and published by the author thereof or his assignee, or which hereafter shall be composed, and not printed or published by the author thereof or his assignee, or the assignee of such author, shall have as his own property the sole liberty of representing, or causing to be represented, at any place or places of dramatic entertainment whatsoever, in any part of the united kingdom of *Great Britain* and *Ireland*, in the *Isles of Man*, *Jersey*, and *Guernsey*, or in any part of the *British* dominions, any such production as aforesaid, not printed and published by the author thereof or his assignee, and shall be deemed and taken to be the proprietor thereof; and that the author of any such production, printed and published within ten years before the passing of this Act by the author thereof or his assignee, or which shall hereafter be so printed and published, or the assignee of such author, shall, from the time of passing of this Act, or from the time of such publication respectively, until the end of twenty-eight years from the day of such first publication of the same, and also, if the author or authors, or the survivor of the authors, shall be living at the end of that period, during the residue of his natural life, have as his own property, the sole liberty of representing, or causing to be represented, the same at any such place of dramatic entertainment as aforesaid, and shall be deemed and taken to be the proprietor thereof: provided, nevertheless, that nothing in this Act contained shall prejudice, alter, or affect the right or authority of any person to represent or cause to be represented, at any place or places of dramatic entertainment whatsoever, any such production as aforesaid, in all cases in which the author thereof or his assignee shall, previously to the passing of this Act, have given his consent to, or authorized such representation, but that such sole liberty of the author or his assignee shall be subject to such right or authority.

II. And be it further enacted, that if any person shall, during the continuance of such sole liberty as aforesaid, contrary to the intent of this Act, or right of the author or his assignee, represent, or cause to be represented, without the consent in writing of the author or other proprietor first had and obtained, at any place of dramatic entertainment within the limits aforesaid, any such production as aforesaid, or any part thereof, every such offender shall be liable for each and every such representation to the payment of an amount not less than forty shillings, or to the full amount of the benefit or advantage arising from such representation, or the injury or loss sustained by the plaintiff therefrom, whichever shall be the greater damages, to the author or other proprietor of such production so represented contrary to the true intent and meaning of this Act, to be recovered, together with double costs of suit, by such author or other proprietor, in any court having jurisdiction in such cases in that part of the said united kingdom of the *British* dominions in which the offence shall be committed; and in every such proceeding, where the sole liberty of such author or his assignee as aforesaid, shall be subject to such right or authority as aforesaid, it shall be sufficient for the plaintiff to state that he has such sole liberty, without stating the same to be subject to such right or authority, or otherwise mentioning the same.

III. Provided, nevertheless, and be it further enacted, that all actions or proceedings for any offence or injury that shall be committed against this Act shall be brought, sued, and commenced within twelve calendar months next after such offence committed, or else the same shall be void and of no effect.

IV. And be it further enacted, that whenever authors, persons, offenders, or others, are spoken of in this Act in the singular number or in the masculine gender, the same shall extend to any number of persons and to either sex.

B.

5 AND 6 VICTORIA, c. 45.

AN ACT TO AMEND THE LAW OF COPYRIGHT.

JULY 1, 1842.

I.—Repeals 8 Anne, c. 19; 41 Geo. III., c. 107; 54 Geo. III., c. 156, except "so far as the continuance of either of them may be necessary for carrying on, or giving effect to, any proceedings at law or in equity pending at the time of passing of this Act, or for enforcing any cause of action or suit, or any right or contract then subsisting."

II.—Interpretation Clause. The word "book" is construed to mean and include any volume, part, or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan separately published; the words "dramatic piece," every tragedy, comedy, play, opera, farce, or other scenic, musical, or dramatic entertainment; and the word "copyright," the "sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the said word is herein applied."

III.—And be it enacted, that the copyright in every book which shall, after the passing of this Act, be published in the lifetime of its author, shall endure for the natural life of such author, and for the further term of seven years, commencing at the time of his death, and shall be the property of such author and his assigns; provided always, that if the said term of seven years shall expire before the end of forty-two years from the first publication of such book, the copyright shall, in that case, endure for such period of forty-two years; and that the copyright in every book which shall be published after the death of its author, shall endure for the term of forty-two years from the first publication thereof, and shall be the property of the proprietor of the author's manuscript from which such book shall be first published, and his assigns.

IV.—And whereas it is just to extend the benefits of this Act to authors of books published before the passing thereof, and in which copyright still subsists: be it enacted, that the copyright which at the time of passing this Act shall subsist in any book theretofore published (except as hereinafter mentioned), shall be extended, and endure for the full term provided by this Act in cases of books thereafter published, and shall be the property

of the person who, at the time of passing this Act, shall be the proprietor of such copyright: provided always, that in all cases in which such copyright shall belong in whole or in part to a publisher, or other person who shall have acquired it for other consideration than that of natural love and affection, such copyright shall not be extended by this Act, but shall endure for the term which shall subsist therein at the time of passing of this Act, and no longer; unless the author of such book, if he shall be living, or the personal representative of such author, if he shall be dead, and the proprietor of such copyright, shall, before the expiration of such term, consent and agree to accept the benefits of this Act in respect of such book, and shall cause a minute of such consent, in the form in that behalf given in the schedule to this Act annexed, to be entered in the book of registry hereinafter directed to be kept, in which case such copyright shall endure for the full term by this Act provided in cases of books to be published after the passing of this Act, and shall be the property of such person or persons as in such minute shall be expressed.

V.—Privy Council may license the republication of books which proprietors refuse to republish after death of author.

VI.—Copies of books published, and of all subsequent editions, to be delivered within certain times at the British Museum.

VII.—Mode of delivery at the British Museum.

VIII.—A copy of every book to be delivered within a month after demand to the office of the Stationers' Company, for the following libraries: the Bodleian at Oxford, the Public Library at Cambridge, the Faculty of Advocates at Edinburgh, and that of Trinity College, Dublin.

IX.—Publishers may deliver the copies at the Libraries instead of at the Stationers' Company.

X.—Penalty of £5 for default in delivering copies for the use of the Libraries.

XI.—And be it enacted, that a book of registry, wherein may be registered, as hereinafter enacted, the proprietorship in the copyright of books, and assignments thereof, and in dramatic and musical pieces, whether in manuscript or otherwise; and licences affecting such copyright, shall be kept at the Hall of the Stationers' Company, by the officer appointed by the said company for the purposes of this Act, and shall at all convenient times be open to the inspection of any person, on payment of one shilling for every entry which shall be searched for or inspected in the said book; and that such officer shall, whenever thereunto reasonably required, give a copy of any entry in such book, certified under his hand, and impressed with the stamp of the said company, to be provided by them for that purpose, and which they are hereby required to provide to any person requiring the same, on payment to him of the sum of five shillings; and such copies so certified and impressed shall be received in evidence in all courts, and in all summary proceedings, and shall be *prima facie* proof of the proprietorship or assignment of copyright or licence as therein expressed, but subject to be rebutted by other evidence; and, in the cases of dramatic or musical pieces, shall be *prima facie* proof of the right of representation or performance subject to be rebutted as aforesaid.

XII.—And be it enacted, that if any person shall wilfully make, or cause to be made, any false entry in the registry book of the Stationers' Company, or shall wilfully produce or cause to be tendered in evidence, any paper falsely purporting to be a copy of any entry in the said book, he shall be guilty of an indictable misdemeanour, and shall be punished accordingly.

XIII.—And be it enacted that, after the passing of this Act, it shall be lawful for the proprietor of copyright in any book heretofore published, or in any book hereafter to be published, to make entry in the registry book of the Stationers' Company of the title of such book, the time of the first publication thereof, the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the copyright of the said book, or of any portion of such copyright, in the form in that behalf given in the schedule to this Act annexed, upon payment of the sum of five shillings to the officer of the said company; and it shall be lawful for every such registered proprietor to assign his interest, or any portion of his interest therein, by making registry in the said book of registry of such assignment, and of the name and place of abode of the assignee thereof, in the form given in that behalf in the said schedule, on payment of the like sum; and such assignment so entered shall be effectual in law to all intents and purposes whatsoever, without being subject to any stamp or duty, and shall be of the same force and effect as if such assignment had been made by deed.

XIV.—And be it enacted, that if any person shall deem himself aggrieved by any entry made under colour of this Act in the said book of registry, it shall be lawful for such person to apply by motion to the Court of Queen's Bench, Court of Common Pleas, or Court of Exchequer, in term time, or to apply by summons to any judge of either of such courts in vacation, for an order that such entry may be expunged or varied; and that, upon any such application by motion or summons to either of the said courts, or to a judge as aforesaid, such court or judge shall make such order for expunging, varying, or confirming such entry, either with or without costs, as to such court or judge shall seem just; and the officer appointed by the Stationers' Company for the purposes of this Act shall, on the production to him of any such order for expunging or varying any such entry, expunge or vary the same according to the requisitions of such order.

XV.—And be it enacted, that if any person shall, in any part of the British dominions, after the passing of this Act, print, or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyright, without the consent in writing of the proprietor thereof, or shall import for sale or hire any such book so having been unlawfully printed from parts beyond the sea, or, knowing such book to have been so unlawfully printed or imported, shall sell, publish, or expose to sale or hire, or cause to be sold, published, or exposed to sale or hire, or shall have in his possession for sale or hire any such book so unlawfully printed or imported, without such consent as aforesaid, such offender shall be liable to a special action on the case at the suit of the proprietor of such copyright, to be brought in any court of record in that part of the British dominions in which the offence shall be committed: provided always, that in Scotland such offender shall be liable to an action in the Court of Session in Scotland, which shall and may be brought and prosecuted in the same manner in which any other action of damages to the like amount may be brought and prosecuted there.

XVI.—And be it enacted, that after the passing of this Act, in any action brought within the British dominions against any person for printing any such book for sale, hire, or exportation, or for importing, selling, publishing, or exposing to sale or hire, or causing to be imported, sold, published, or exposed to sale or hire, any such book, the defendant, on pleading thereto, shall give to the plaintiff a notice in writing of any objections on which he means to rely, on the trial of such action; and if the nature of his defence be, that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim copyright, or is not the proprietor of the copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the copyright therein, then the defendant shall specify in such notice the name of the person whom he alleges to have been the author or first publisher of such book, or the proprietor of the copyright therein, together with the title of such book, and the time when, and the place where such book was first published; otherwise the defendant in such action shall not, at the trial or hearing of such action, be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such copyright as aforesaid, or that he was not the proprietor of the copyright therein; and at such trial or hearing, no other objections shall be allowed to be made on behalf of such defendant than the objections stated in such notice, or that any other person was the author or first publisher of such book, or the proprietor of the copyright therein, than the person specified in such notice, or give in evidence in support of his defence any other book than one substantially corresponding in title, time, and place of publication, with the title, time, and place specified in such notice.

XVII.—Penalty of £10 and double value for importing into the British dominions, for sale or hire, books first composed within the United Kingdom, and reprinted elsewhere.

XVIII.—Copyright in encyclopædias, periodicals, and works published in a series, reviews, or magazines.

XIX.—Proprietors of encyclopædias, periodicals, &c., may enter at Stationers' Hall, and have the benefit of registration of the whole.

XX.—And whereas an Act was passed in the third year of the reign of his late Majesty, to amend the law relating to dramatic literary property; and it is expedient to extend the term of the sole liberty of representing dramatic pieces given by that Act, to the full time by this Act provided for the continuance of copyright; and whereas it is expedient to extend musical compositions the benefits of that Act, and also of this Act; be it therefore

enacted, that the provisions of the said Act of his late Majesty, and of this Act, shall apply to musical compositions, and that the sole liberty of representing or performing, or causing or permitting to be represented or performed, any dramatic piece or musical composition, shall endure and be the property of the author thereof, and his assigns, for the term in this Act provided for the duration of copyright in books; and the provisions herein before enacted, in respect of the property of such copyright, and of registering the same, shall apply to the liberty of representing or performing any dramatic piece or musical composition, as if the same were herein expressly re-enacted and applied thereto, save and except that the first public representation or performance of any dramatic piece or musical composition shall be deemed equivalent, in the construction of this Act, to the first publication of any book; provided always, that in case of any dramatic piece, or musical composition in manuscript, it shall be sufficient for the person having the sole liberty of representing or performing, or causing to be represented or performed the same, to register only the title thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor thereof, and the time and place of its first representation or performance.

XXI.—And be it enacted, that the person who shall at any time have the sole liberty of representing such dramatic piece or musical composition, shall have and enjoy the remedies given and provided in the said Act of the third and fourth years of the reign of his late majesty King William the Fourth, passed to amend the laws relating to dramatic literary property, during the whole of his interest therein, as fully as if the same were re-enacted in this Act.

XXII.—And be it enacted, that no assignment of the copyright of any book, consisting of or containing a dramatic piece or musical composition, shall be holden to convey to the assignee the right of representing or performing such dramatic piece or musical composition, unless an entry in the said registry book shall be made of such assignment, wherein shall be expressed the intention of the parties that such right should pass by such assignment.

XXIII.—Books pirated shall become the property of the proprietor of the copyright, and may be recovered by action.

XXIV.—And be it enacted, that no proprietor of copyright in any book which shall be first published after the passing of this Act, shall maintain any action or suit at law, or in equity, or any summary proceeding in respect of any infringement of such copyright, unless he shall, before commencing such action, suit, or proceeding, have caused an entry to be made in the book of registry of the Stationers' Company of such book, pursuant to this Act: provided always, that the omissions to make such entry shall not affect the copyright in any book, but only the right to sue or proceed in respect of the infringement thereof, as aforesaid: provided also, that nothing herein contained shall prejudice the remedies which the proprietor of the sole liberty of representing any dramatic piece shall have, by virtue of the Act passed in the third year of the reign of his late Majesty King William the Fourth, to amend the laws relating to dramatic literary property, or of this Act, although no entry shall be made in the book of registry aforesaid.

XXV.—And be it enacted, that all copyright shall be deemed personal property, and shall be transmissible by bequest, or, in case of intestacy, shall be subject to the same law of distribution as other personal property; and, in Scotland, shall be deemed to be personal and moveable estate.

XXVI.—General issue. Limitation of actions.

XXVII.—Saving rights of the universities, &c.

XXVIII.—Saving all subsisting rights, contracts, and engagements.

XXIX.—Act to extend to *Great Britain* and *Ireland*, and to every part of the *British* dominions.

SCHEDULES TO WHICH THE PRECEDING ACT REFERS.

No. 1.

FORM OF MINUTE OF CONSENT TO BE ENTERED AT STATIONERS' HALL.

We, the undersigned, A. B. of , the author of a certain book entitled Y. Z. (or the personal representative of the author, *as the case may be*), and C. D. of , do hereby certify, that we have consented and agreed to accept the benefits of the Act passed in the fifth year of

the reign of Her Majesty, the Queen Victoria, cap. , for the extension of the term of copyright therein provided by the said Act, and hereby declare that such extended term of copyright therein is the property of the said A. B. or C. D.

Dated this day of , 18 .
Witness (Signed) A. B.
C. D.

To the Registering Officer appointed by the Stationers' Company.

No. 2.

FORM OF REQUIRING ENTRY OF PROPRIETORSHIP.

I, A. B. of , do hereby certify that I am the proprietor of the copyright of a book entitled Y. Z., and I hereby require to make entry in the Register Book of the Stationers' Company of my proprietorship of such copyright, according to the particulars underwritten.

Title of Book.	Name of Publisher, and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.
Y. Z.		A. B.	

Dated this day of , 18 .
Witness, C. D. (Signed) A. B.

No. 3.

ORIGINAL ENTRY OF PROPRIETORSHIP OF COPYRIGHT IN A BOOK.

Time of making Entry.	Title of Book.	Name of the Publisher, and Place of Publication.	Name and Place of Abode of the Proprietor of Copyright.	Date of First Publication.
	Y. Z.	A. B.	C. D.	

No. 4.

FORM OF CONCURRENCE OF THE PARTY ASSIGNING IN ANY BOOK PREVIOUSLY REGISTERED.

I, A. B. of , being the Assignor of the Copyright in the book hereunder described, do hereby require you to make entry of the assignment of the Copyright therein.

No. 5.

FORM OF ENTRY OF ASSIGNMENT OF COPYRIGHT IN ANY BOOK PREVIOUSLY REGISTERED.

Date of Entry.	Title of Book.	Assignor of the Copyright.	Assignee of Copyright.
	(*Also refer to Page of Original in Book of Registry*).	A. B.	C. D.

C.

6 AND 7 VICTORIA, c. 68.

AN ACT FOR REGULATING THEATRES. 22ND AUGUST 1843.

WHEREAS it is expedient that the laws now in force for regulating theatres and theatrical performances be repealed, and other provisions be enacted in their stead: be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this parliament assembled, and by the authority of the same, that an Act passed in the third year of the reign of King James the First, intitled, "*An Act to restrain the abuses of players;*" and so much of another Act passed in the tenth year of the reign of King George the Second, for the more effectual preventing the unlawful playing of interludes within the precincts of the two Universities, in that part of *Great Britain* called *England*, and the places adjacent, as is now in force; and another Act, passed in the tenth year of the reign of King George the Second, entitled, *An Act to explain and amend so much of the Act made in the twelfth year of the reign of Queen* ANNE, *intitled "An Act for reducing the laws relating to rogues, vagabonds, sturdy beggars, and vagrants, into one Act of Parliament, and for the more effectual punishing such rogues, vagabonds, sturdy beggars, and vagrants, and sending them whither they ought to be sent, as relates to common players of interludes;*" and another Act, passed in the twenty-eighth year of the reign of King George the Third, entitled, *An "Act to enable justices of the peace to licence theatrical representations occasionally, under the restrictions therein contained,*" shall be repealed: provided always, that any licence now in force, granted by the Lord Chamberlain, or granted by any justices of the peace, under the provisions of the last recited Act, shall continue in force for the times for which the same were severally granted, or until revoked by the authority by which they were severally granted.

II.—And be it enacted that, except as aforesaid, it shall not be lawful for any person to have or keep any house or other place of public resort in *Great Britain*, for the public performance of stage plays, without authority by virtue of letters patent from her Majesty, her heirs and successors, or predecessors, or without licence from the Lord Chamberlain of her Majesty's household for the time being, or from the Justices of the Peace as hereinafter provided; and every person who shall offend against this enactment shall be liable to forfeit such sum as shall be awarded by the Court in which, or the justices by whom he shall be convicted, not exceeding twenty pounds for every day on which such house or place shall have been so kept open by him for the purpose aforesaid, without legal authority.

III.—And be it enacted, that the authority of the Lord Chamberlain for granting licences, shall extend to all theatres (not being patent theatres) within the parliamentary boundaries of the cities of *London* and *Westminster*, and of the boroughs of *Finsbury* and *Marylebone*, the *Tower Hamlets*, *Lambeth* and *Southwark*, and also within those places where her Majesty, her heirs and successors, shall, in their royal persons, occasionally reside: provided always, that except within the cities and boroughs aforesaid, and the boroughs of *New Windsor*, in the county of *Berks*, and *Brighthelmstone*, in the county of *Sussex*, licences for theatres may be granted by the justices as hereinafter provided, in those places in which her Majesty, her heirs and successors, shall occasionally reside; but such licences shall not be in force during the residence there of her Majesty, her heirs and successors; and, during such residence, it shall not be lawful to open such theatres as last aforesaid (not being patent theatres) without the licence of the Lord Chamberlain.

IV.—And be it enacted, that for every such licence granted by the Lord Chamberlain, a fee, not exceeding ten shillings for each calendar month during which the theatre is licensed to be kept open, according to such scale of fees as shall be fixed by the Lord Chamberlain, shall be paid to the Lord Chamberlain.

V.—And be it enacted that the justices of the peace within every county, riding, division, liberty, cinque port, city, and borough, in *Great Britain*, beyond the limits of the authority of the Lord Chamberlain, in which application shall have been made to them for any such licence as is hereinafter mentioned, shall within twenty-one days next after such application shal

have been made to them in writing, signed by the party making the same, and countersigned by at least two justices, acting in and for the division within which the property proposed to be licenced shall be situate, and delivered to the clerk to the said justices, hold a special session in the division, district, or place, for which they usually act for granting licences to houses for the performance of stage-plays; of the holding of which session, seven days' notice shall be given by their clerk to each of the justices acting within such division, district, or place; and every such licence shall be given under the hands and seals of four or more of the justices assembled at such special session, and shall be signed and sealed in open court, and afterwards shall be publicly read by the clerk, with the names of the justices subscribing the same.

VI.—And be it enacted, that for every such licence granted by the justices, a fee, not exceeding five shillings for each calendar month during which the theatre is licensed to be kept open, according to such scale of fees as shall be fixed by the justices, shall be paid to the clerk of the said justices.

VII.—And be it enacted, that no such licence for a theatre shall be granted by the Lord Chamberlain or justices to any person except the actual and responsible manager, for the time being, of the theatre in respect of which the licence shall be granted; and the name and place of abode of such manager shall be printed on every playbill announcing any representation at such theatre; and such manager shall become bound himself in such penal sum as the Lord Chamberlain or justices shall require, being in no case more than one hundred pounds, for the due observance of the rules which shall be in force at any time during the currency of the licence for regulation of such theatre, and for securing payment of the penalties which such manager may be adjudged to pay for breach of the said rules, or any of the provisions of this Act.

VIII.—And be it enacted, that in case it shall appear to the Lord Chamberlain that any riot or misbehaviour has taken place in any theatre licensed by him, or in any patent theatre, it shall be lawful for him to suspend such licence, or to order such patent theatre to be closed, for such time as to him shall seem fit; and it shall also be lawful for the Lord Chamberlain to order that any patent theatre, or any theatre licensed by him, shall be closed on such public occasions as to the Lord Chamberlain shall seem fit; and while any such licence shall be suspended, or any such order shall be in force, the theatre to which the same applies shall not be entitled to the privilege of any letters patent or licence, but shall be deemed an unlicensed house.

IX.—And be it enacted, that the said justices of the peace at a special licensing session, or at some adjournment thereof, shall make suitable rules for insuring order and decency at the several theatres licensed by them within their jurisdiction, and for regulating the times during which they shall severally be allowed to be open; and from time to time, at another special session, of which notice shall be given as aforesaid, may rescind or alter such rules; and it shall be lawful for any one of her Majesty's principal Secretaries of State to rescind or alter any such rules, and also to make such other rules for the like purpose as to him shall seem fit; and a copy of all rules which shall be in force for the time being shall be annexed to every such licence; and in case any riot or breach of the said rules in any such theatre shall be proved on oath before any two justices usually acting in the jurisdiction where such theatre is situated, it shall be lawful for them to order that the same be closed for such time as to the said justices shall seem fit; and while such order shall be in force, the theatre so ordered to be closed shall be deemed an unlicensed house.

X.—Provided always, and be it enacted, that no such licence shall be in force within the precincts of either of the universities of *Oxford* or *Cambridge*, or within fourteen miles of the city of *Oxford* or town of *Cambridge*, without the consent of the chancellor or vice-chancellor, of each of the said universities respectively; and that rules for the management of any theatre which shall be licensed with such consent within the limits aforesaid, shall be subject to the approval of the said chancellor or vice-chancellor respectively; and in case of the breach of any of the said rules, or of any condition on which the consent of the chancellor or vice-chancellor to grant any such licence shall have been given, it shall be lawful for such chancellor or vice-chancellor respectively to annul the licence, and thereupon such licence shall become void.

XI.—And be it enacted, that every person who for hire shall act or present, or cause, permit, or suffer to be acted or presented, any part in any stage play, in any place not being a patent theatre or duly licensed as a theatre, shall

forfeit such sum as shall be awarded by the court in which, or the justices by whom he shall be convicted, not exceeding ten pounds for every day on which he shall so offend.

XII.—And be it enacted, that one copy of every new stage play, and of every new act, scene, or other part added to any old stage play, and of every new prologue or epilogue, and of every new part added to an old prologue or epilogue, intended to be produced and acted for hire at any theatre in *Great Britain*, shall be sent to the Lord Chamberlain of her Majesty's household for the time being, seven days at least before the first acting or presenting thereof, with an account of the theatre where, and the time when the same is intended to be first acted or presented, signed by the master or manager, or one of the masters or managers of such theatre; and during the said seven days no person shall for hire act or present the same, or cause the same to be acted or presented; and in case the Lord Chamberlain, either before or after the expiration of the said period of seven days, shall disallow any play, or any act, scene, or part thereof, or any prologue or epilogue, or any part thereof, it shall not be lawful for any person to act or present the same, or cause the same to be acted or presented, contrary to such disallowance.

XIII.—And be it enacted, that it shall be lawful for the Lord Chamberlain to charge such fees for the examination of the plays, prologues, and epilogues, or parts thereof, which shall be sent to him for examination, as to him from time to time shall seem fit, according to a scale which shall be fixed by him, such fee not being in any case more than two guineas, and such fees shall be paid at the time when such plays, prologues, and epilogues, or parts thereof, shall be sent to the Lord Chamberlain; and the said period of seven days shall not begin to run in any case until the said fee shall have been paid to the Lord Chamberlain, or to some officer deputed by him to receive the same.

XIV.—And be it enacted that it shall be lawful for the Lord Chamberlain for the time being, whenever he shall be of opinion that it is fitting, for the preservation of good manners, decorum, or of the public peace so to do, to forbid the acting or presenting any stage play, or any act, scene, or part thereof, or prologue or any epilogue, or any part thereof, anywhere in *Great Britain*, or in such theatres as he shall specify, and either absolutely or for such time as he shall think fit.

XV.—And be it enacted, that every person who for hire shall act or present, or cause to be acted or presented, any new stage play, or any act, scene, or part thereof, or any new prologue or epilogue, or any part thereof, until the same shall have been allowed by the Lord Chamberlain, or which shall have been disallowed by him; and also every person who for hire shall act or present, or cause to be acted or presented, any stage play, or any act, scene, or part thereof, or any prologue or epilogue, or any part thereof, contrary to such prohibition as aforesaid, shall for every such offence forfeit such sum as shall be awarded by the Court in which, or the justices by whom he shall be convicted, not exceeding the sum of fifty pounds; and every licence (in case there be any such) by or under which the theatre was opened, in which such offence shall have been committed, shall become absolutely void.

XVI.—And be it enacted, that in every case in which any money or other reward shall be taken or charged directly or indirectly, or in which the purchase of any article is made a condition for the admission of any person into any theatre, to see any stage play; and also in every case in which any stage play shall be acted or presented in any house, room or place, in which distilled or fermented excisable liquor shall be sold, every actor therein shall be deemed to be acting for hire.

XVII.—And be it enacted, that in any proceedings to be instituted against any person for having or keeping an unlicensed theatre, or for acting for hire in an unlicensed theatre, if it shall be proved that such theatre is used for the public performance of stage plays, the burden of proof that such theatre is duly licensed or authorised, shall lie on the party accused, and, until the contrary can be proved, such theatre shall be taken to be unlicensed.

XVIII.—And be it enacted that, after the passing of this Act, it shall be lawful for any person against whom any action or information shall have been commenced, for the recovery of any forfeiture or pecuniary penalty, incurred under the said Act of the tenth year of the reign of King *George* the Second, to apply to the Court in which such action or information shall have been commenced, if such Court shall be sitting, or, if such Court shall

not be sitting, to any judge of either of the Superior Courts at *Westminster*, for an order that such action or information shall be discontinued, upon payment of the costs thereof incurred to the time of such application being made, such Costs to be taxed according to the practice of such Court; and every such Court or judge (as the case may be), upon such application and proof that sufficient notice has been given to the plaintiff or informer, or to his attorney, of the application, shall make such order as aforesaid; and upon the making order, and payment or tender of such costs as aforesaid, such action or information shall be forthwith discontinued.

XIX.—And be it enacted, that all the pecuniary penalties imposed by this Act, for offences committed in *England*, may be recovered in any of her Majesty's Courts of Record at *Westminster;* and for offences committed in *Scotland*, by action of summary complaint before the Court of Session or Justiciary there; or for offences committed in any part of *Great Britain*, in a summary way before two justices of the peace for any county, riding, division, liberty, city, or borough, where any such offence shall be committed, by the oath or oaths of one or more credible witness or witnesses, or by the confession of the offender; and, in default of payment of such penalty, together with the costs, the same may be levied by distress and sale of the offender's goods and chattels, rendering the overplus to such offender, if any there be above the penalty, costs, and charge of distress; and, for want of sufficient distress, the offender may be imprisoned in the common gaol or house of correction of any such county, riding, division, liberty, city, or borough, for any time not exceeding six calendar months.

XX.—And be it enacted, that it shall be lawful for any person who shall think himself aggrieved by any order of such justices of the peace, to appeal therefrom to the next general or quarter sessions of the peace to be holden for the said county, riding, division, liberty, city, or borough, whose order therein shall be final.

XXI.—And be it enacted, that the said penalties for any offence against this Act shall be paid and applied, in the first instance, towards defraying the expenses incurred by the prosecutor, and the residue thereof (if any) shall be paid to the use of her Majesty, her heirs, and successors.

XXII.—Provided always, and be it enacted, that no person shall be liable to be prosecuted for any offence against this Act, unless such prosecution shall be commenced within six calendar months after the offence committed.

XXIII.—And be it enacted, that in this Act, the word "stage-play" shall be taken to include every tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, or other entertainment of the stage, or any part thereof: provided always, that nothing herein contained shall be construed to apply to any theatrical representation in any booth or show which, by the justices of the peace, or other persons having authority in that behalf, shall be allowed in any lawful fair, feast, or customary meeting of the like kind.

XXIV.—And be it enacted that this Act shall extend only to *Great Britain*.

D.

FORM OF APPLICATION TO THE JUSTICES FOR A LICENCE TO A THEATRE.

Division of / the Hundred of / in the County of — *To Her Majesty's Justices of the Peace in and for the said County of acting in and for the said Division.*

I, of in the Parish of in the County of being the actual and responsible Manager, for the time being, of a certain Theatre, being a House called the Theatre, situate in in the Parish of in the said Division and County

DO HEREBY make application to you, the said Justices, to grant to me a Licence to keep the said House for the Public performance of Stage Plays therein.

SIGNED by me, the said

the Day of in the Year of our Lord One Thousand Eight Hundred and

COUNTERSIGNED by us of Her Majesty's Justices of the Peace in and for the said County of acting in and for the said Division the Day of in the Year of our Lord One Thousand Eight Hundred and

(Signature.)

E.

FORM OF BOND FOR THEATRES AND SALOONS.

KNOW all men by these presents, that we (*Each manager of a theatre is bound himself in* £300, *and two sureties of* £50 *each; and of a saloon* £200, *and* £50 *each.*) Lord Chamberlain of Her Majesty's Household, in the several sums of money following, that is to say, the said in the sum of hundred pounds of lawful money of Great Britain; the said in the sum of fifty pounds of like lawful money; and the said in the sum of fifty pounds of the like lawful money; such sums to be respectively paid to the said or his attorney, executors, administrators, or assigns; for which several payments so to be well and duly made by us respectively, we bind ourselves respectively, and our respective heirs, executors, and administrators, firmly by these presents, sealed with our seals.

Dated this day of in the year of our Lord 18

Whereas under and by virtue of a certain Act of Parliament, made and passed in the 6th and 7th years of the reign of Queen Victoria, entitled "An Act for Regulating Theatres," the Lord Chamberlain of Her Majesty's Household for the time being is empowered to grant licences for theatres within the limits therein mentioned, and is also given jurisdiction over such theatres and the performances therein. And the manager for the time being of any such theatre is hereby required to do, or abstain from doing, certain acts therein specified; and other provisions are therein contained for carrying into effect the purposes of the said Act, and certain penalties to be awarded, recovered, and paid, together with costs as therein mentioned, are thereby imposed for the breach of any of the requisitions or provisions of the said Act. And it is hereby amongst other things enacted, that no such licence for a theatre shall be granted by the Lord Chamberlain to any person except the actual and responsible manager, for the time being, of the theatre in respect of which the licence shall be granted. And such manager shall become bound himself in such penal sum as the Lord Chamberlain shall require, being in no case more than £500, and two sufficient sureties, to be approved by the said Lord Chamberlain, each in such penal sum as the Lord Chamberlain shall require, being in no case more than £100, for the due observance of the rules which shall be in force at any time during the currency of the licence for the regulation of such theatre, and for securing payment of the penalties which such manager may be adjudged to pay for breach of the said rules, or any of the provisions of the said Act.

And whereas the above-named as such Lord Chamberlain for the time being, hath granted a licence to the above bounden as the actual and responsible manager for the time being of the called situate within the limits of the said Lord Chamberlain's jurisdiction under the said recited Act, for keeping open such from the day of until the day of according to the provisions of the said Act.

And whereas, pursuant to the provisions in that behalf contained in the said recited Act, the said as such Lord Chamberlain, hath required that the above written bond or obligation shall be entered into and executed, and he has approved of the above bounden as sufficient sureties to join therein with the said

Now the condition of the above written bond or obligation is, that if the said do and shall from time to time, and at all times during the continuance or currency of the licence so granted to him for keeping open the called as aforesaid, duly and regularly observe, perform, and obey all and every the rules and regulations which now are, or at any time or times during the continuance or currency of such licence, shall be enjoined or imposed by the Lord Chamberlain of Her Majesty's Household for the time being, or otherwise in existence or force for the regulation of such and also do, and shall well and truly pay, or cause to be paid, all and every the penalties or sums or sum of money which he the said shall be at any time or times hereafter awarded or adjudged to pay, for or on account of the breach or non-performance of all or any of such rules or regulations, or all or any of the provisions of the said recited Act of Parliament for regulating theatres, according to any such award or judgment, together with the costs attending the same, then and in such case the above written bond or obligation to be void, but otherwise to be and remain in force.

Signed, sealed, and delivered in the presence of

(Witness.)

F.

FORM OF LICENCE BY THE JUSTICES FOR A THEATRE.

Division of } At a Special Session of Her Majesty's Justices of the
the Hundred of } Peace, in and for the said County of
in the County of } acting in and for the said Division held at the at in and for the said Division, on the Day of in the Year of our Lord One Thousand Eight Hundred and Sixty for granting Licences to Houses for the Public performance of Stage Plays therein.

WHEREAS it duly appears unto us the undersigned, of the said Justices in Special Session aforesaid assembled, that of the Parish of in the County of being the actual and responsible manager, for the time being, of a certain Theatre, being a house called the "Theatre," for the public performance of Stage Plays, situate in in the Parish of in the said Division hath made application in writing to the Justices of the said Division bearing date the day of in the Year of our Lord One Thousand Eight Hundred and Sixty duly signed by h and countersigned by and two of Her Majesty's Justices of the Peace in and for the said County acting in and for the said Division and delivered the same to gentleman, Clerk to the said Justices of the said Division to grant to h a Licence to keep the said house for the public performance of Stage Plays therein.

We, therefore, the undersigned, being of the said Justices so in Special Session assembled as aforesaid, in pursuance of the Statute in such case made and provided, Do hereby grant this our LICENCE to the said to keep the said house for the public performance of Stage Plays therein, for the space of calendar months from the date hereof, and no longer, the said being the actual and responsible manager for the time of the said house, and having become duly bound by himself and with two sufficient sureties for the due performance of the rules which shall be in force at any time during the currency of this Licence for the regulations of such Theatre, and for securing payment of the penalties which such manager may be adjudged to pay for breach of the said Rules, or any of the Provisions of the Statute aforesaid.

SIGNED and sealed in Open Court by us the Justices last aforesaid, assembled in Special Sessions aforesaid.

This Licence was, immediately after the signing thereof by the said Justices, publicly read in Open Court at the said Special Sessions by me, with the names of the said Justices subscribing the same.

G.

FORM OF PERMISSION BY THE LORD CHAMBERLAIN TO ACT PLAYS.

Lord Chamberlain's Office.

It having been represented to me by the Examiner of all theatrical entertainments, that a manuscript (*or book, as the case may be*), entitled (*title*), does not, in its general tendency, contain any thing immoral, or otherwise improper, for the stage, I, the Lord Chamberlain of her Majesty's household, do, by virtue of my office, and in pursuance of the Act of Parliament in that case provided, allow the performance of the said (*described*) at your Theatre, with the exception of all words and passages which are specified by the Examiner in the endorsement of this licence, and without any further variations whatsoever.

SYDNEY.

To the Manager of the,
&c., &c.

H.

FORM OF LICENCE BY THE LORD CHAMBERLAIN FOR A THEATRE.

I do hereby give leave and licence unto
to have Stage Plays performed at during one year from the date hereof, Ash Wednesday excepted, according to the Act of the 6 and 7 Vict. c. 68, for regulating theatres.

This licence is granted upon the understanding that the above-named actual and responsible manager shall be subject to such rules and regulations as shall be made in regard to the said theatre, and that the Lord Chamberlain shall be enabled at any time to call upon the manager to produce a certificate as to the safety of the building, signed either by the district surveyor, or by some competent architect.

Given under my hand this day of
18 in the year of Her Majesty's reign

LORD CHAMBERLAIN.

I.

FORM OF LICENCE BY THE LORD CHAMBERLAIN FOR A SALOON.

I do hereby give leave and licence unto
to have Stage Plays performed at during one year from the date hereof, Ash Wednesday excepted, according to the Act of the 6 and 7 Vict. c. 68, for regulating Theatres, provided that there be no smoking in the said saloon during the hours it is open for performances under the authority of this licence, and that refreshments are supplied only during the intervals between the performances, as at the theatres, and that there be no tables or stands to place refreshments upon in the saloon, and the said saloon shall not open for such performances on any day whatever before the hour of five in the afternoon.

This licence is granted upon the understanding that the above-named actual and responsible manager shall be subject to such rules and regulations as shall be made in regard to the said theatre, and that the Lord Chamberlain shall be enabled at any time to call upon the manager to produce a certificate as to the safety of the building, signed either by the district surveyor, or by some competent architect.

Given under my hand this day of
18 in the year of Her Majesty's reign

LORD CHAMBERLAIN.

M'CORQUODALE AND CO., PRINTERS, LONDON—WORKS, NEWTON.